NICOALE TITULESCU UNIVERSITY
LAW SCHOOL
DOCTORAL SCHOOL

DOCTORAL THESIS

Non-performance of contractual obligations. Legal nature. General rules of the forms of attainment of the right of the creditor

ABSTRACT

Scientifical coordinator
Professor Gabriel Boroi, PhD

PhD candidate
Vlad-Victor Ochea

Bucharest
2022

Table of contents

1. The choice of the research topic – non-performance of contractual obligations. Legal nature. General rules of the forms of attainment of the right of the creditor – is based on upon the fascination to the vivacity of the obgliations' matter and the interest for the complexity of the legal problems generated by the non-performance of the contract in the context of an increasingly denser and more complex network of social relations.

It is useful that the legal doctrine and the case law elaborated under the Civil Code of 1864 be brought out in the new legislative context, insofar as its correctness are preserved.

We mainly resorted to the logical method because the law is an eminently deductive science, as an author stated[1], and to the explanatory method, to establish the meaning and the interpretation of the legal norms that form the institutions analysed herein. We also applied the comparative method, in the attempt to highlight the similarities and differences between our legal system and the others and between our legal system and international regulations or soft law.

2. This study mainly regards the provisions contained within the Chapter II The specific performance of obligations of the Title V Performance of obligations of the fifth Book Of obligations of the Civil Code. This chapter consists of six sections: 1. General provisions; 2. Mora debitoris; 3. Specific performance; 4. Damages; 5. The termination of the contract and the reduction of the obligations and 6. Justified causes for the non-performance of the obligations.

Starting from the sections of Chapter II The specific performance of obligations and from the provision of art. 1516 Civil Code, we bring together the specific performance, damages, and the termination of the contract, together with the reduction of the obligations under the name of forms of attainment of the right of the creditor.

Mora debitoris shall also be analysed. It is not one of the forms of attainment of the right of the creditor, but the mechanism that conditions it.

The choice of this concept, i.e. forms of attainment of the right of the creditor, starts from the correlation between material and formal aspects, but from another

[1] N. Popa, *Teoria generală a dreptului*, ediția 3, (București: Ed. C.H. Beck, 2008), p. 15.

perspective that the one encountered, for example, with respect to the legal act, where the distinction is made between the material and formal prerequisites.

In Roman Law, the distinction between the legal operation, on the one hand, and the technical-legal form by which the former is realized, can be observed. The sale, for example, represented the legal operation, which was carried out either by mancipio, or by the double stipulatio, or by the consensual contract , these being the forms of the sale.

Another example from the roman law is the assignment agreement, which took the form of novation by substitution of the creditor and further, of the mandate in rem suam .

Therefore, the non-performance of the contractual obligations represents the material matter, and the forms of attainment of the rights of the creditor are the actions - material rights to action or other prerogatives from the structure of the right - by which the right of the creditor is sanctioned (protected), by which this right is directly satisfied (the specific performance of the obligation) or, as the case may be, the damage caused by the violation of such right is compensated, following the non-performance (culpable) of the obligation (the damages), or the legal relationship (the contract) breached by the debtor is terminated, at least in part (the termination of the contract, the reduction of the obligation).

In their turn, these forms of attainment of the right of the creditor are components of the violated right, more precisely parts of the sanction with which the right is endowed and take shape in case of non-performance of the obligation incumbent on the debtor.

There is no hierarchy of the forms of attainment of the right of the creditor, meaning that he should choose the specific performance of the obligation and only by exception the damages or the termination of the contract, or vice versa. Subject to the fulfilment of the conditions, the creditor has the full freedom to choose the appropriate form to lead, in his vision, to the attainment of the violated right by the non-performance of the obligation. A possible hierarchy may, eventually, arise from the mechanism of the (un)fulfilment of the conditions of one or the other of the forms of attainment of his right.

To the extent that they are not incompatible, the forms of the attainment may be cumulated, in respect of the full attainment of the right of the creditor. For example, it is not conceivable to resort to both the specific performance of the obligation and the termination of the contract, but it is possible to cumulate the specific performance of the obligation with damages for late performance or to obtain, simultaneously, the termination of the contract and damages.

Within the second title Non-performance of contractual obligations. Legal nature we will analyse the concept and elements of the obligation (Chapter I) – making, mainly, the distinction between the obligation of dare, facere and non facere, respectively the obligations to achieve a specific result and reasonable endeavour obligations - where upon we will present the conclusions over the legal nature of the non-performance of contractual obligations (Chapter II).

Chapter I of the third title Forms of the attainment of the right of the creditor is reserved to mora debitoris in the performance of the contractual obligations, this being the previously condition of the resort to the forms of attainment of the right of the creditor.

Chapter II concerns the unjustified non-performance (culpable) of contractual obligations, and Chapters III, IV and V of the same title concerns the specific performance of the obligation, the damages and the termination of the contract, together with the reduction of the obligation. Chapter VI is dedicated to the clauses and conventions amending the regime of the forms of attainment the right of the creditor.

The last title contains the conclusion drawn following the research embodied herein.

The thesis also contains some procedural matters, since the right must fall within the procedural rigors to be applied, when the conflict of law between the debtor and the creditor arises. By connecting the material law to the procedural law, the rights are sanctioned, when they are violated. Not by chance, Roman Law has evolved procedurally, being an eminently procedural legal system, the mechanism of procedural law giving shape to forms previously unknown to material law.

Although the current content of legal institutions analysed herein is the result of a long evolution, we will limit our incursion, in terms of their history, to the Roman

law, as a common foundation of all legal systems within the Roman-Germanic legal systems. Certainly, where appropriate, we will also analyse other stages of evolution, as it is not always possible to follow a direct route of evolution from the Roman law to current law.

In the process of unravelling the correct way of applying the provisions contained by Civil Code, it is natural to resort to Roman law, because even the sources considered by the legislator when drafting the Civil Code of 2009 are based on Roman law.

Last but not least, the thesis also contains some foreign law elements – Italian Civil Code of 1942, Civil Code of Quebec of 1991 and the French Civil Code of 1804, as amended by Ordinance no. 131 of February 10, 2016, as ratified by Law no. 2018-287 -, but also a few elements extracted from the international and European regulations and soft law - United Nations convention of contract for the international sale of goods; UNIDROIT Principles; Principles of European Contract Law; Draft Common Frame of Reference.

3. The outline of the instruments with the help of which the non-performance of contractual obligations is dealt with, as well as of the legal institutions related to them, will demonstrate the unitary perspective of what means the forms of attainment of the right of the creditor.

g Pursuant to article 1516 of the Civil Code: ”(1) the creditor has the right to the full, exact and in a timely manner attainment of the obligation. (2) When, without justification, the debtor does not perform its obligation and is in mora, the creditor may, at his own choose and without loosing the right to damages, if owed: 1. to ask or to proceed to specific performance of the obligation; 2. to obtain, whether contractual obligation, the termination of the contract or the reduction of the obligation; 3. to use any other legal form to attain his right.”

The first paragraph establishes the right of the creditor to proper or, as it was also named by the legal doctrine , compliant performance of the obligation, and also indicates its fundament, respectively pacta sunt servanda principle, provided by article 1270 of the Civil Code: ”The valid concluded contract has the force of law between the contracting parties” [para. (1) of article 1270], as the parties freely

expressed their consent in respect of concluding the contract, the debtor undertaking to fully, exactly and in a timely manner purchase to the creditor the undertaken obligation.

Para. 2 of article 1516 contains the two general conditions on the meeting of which the use of one or more forms depends: non-performance, without justification, of the obligation undertake by the contract and mora.

The same paragraph enunciates one of the forms of attainment of the right of the creditor, namely damages.

Points 1and 2 contain the enumeration of the other forms of attainment of the right of the creditor, respectively the specific performance of the obligation, the termination of the contract and the reduction of the obligation, and point 3 refer, by any other way of attainment provided by law, to derivative action and action pauliana, which, however, are not (primary) forms of attainment of the right of the creditor, but forms of protection of the rights of the creditor, as indicated by the name of Chapter III, from the same Title V of the same Book V of the Civil Code.

While the forms analysed herein lead to the attainment of the right of the creditor, the derivative action and action pauliana occasion this attainment. They exceed the analysis contained in this thesis.

Once the rights and actions of the debtor have been exercised through the derivative action, the creditor can foreclose the assets subject of them, as, after declaring an act unopposable, as it was concluded in fraud of his rights, the creditor can proceeds to the foreclosure of the goods and/or amount of money subject of that act, obviously, in both cases - the derivative action and actio pauliana - after obtaining an enforceable title that establishes either the obligation of the debtor to specific performance of the obligation, or the obligation to pay an amount of money as damages (performance by equivalent).

The possibility of the creditor to use the forms of attainment of his right is limited, if the non-performance of the obligation of the debtor is the result of his own action or omission (article 1517 of the Civil Code).

Articles 1518-1519 of the Civil Code establish two fundamental rules in this matter: the rules of individual liability - at the end of a long evolution of law, the liability acquired a personal character, collective liability being exceptional -, but also

the rule of the liability of the debtor for the damages caused by the fault of the individuals he resorts to in the performance of contractual obligations. These individuals can be simple agents or subcontractors [liability for the (contractual) deed of another].

Finally, article 1520 of the Civil Code opens the way for the creditor to foreclose third-party assets, "(...) if they are encumbered for the payment of the debts of the debtor or were the subject of legal acts that were revoked as having been concluded in fraud of the creditor" (because of the granting of the actio pauliana).

In a broad sense, non-performance means both total and partial non-performance, but also improper or delayed performance of the obligation.

The non-performance of the contractual obligations represents that circumstance that intervenes during the performance of the legally binding relationship and which is circumscribed either to the fault of the debtor or to a situation independent of his will, and which has as a consequence the non-achievement of the purpose pursued by the creditor at the conclusion of the contract, by quantitatively, qualitatively or temporally altering the obligation, as determined by law and by the parties agreement.

Unjustified non-performance is usually equivalent to culpable (culpable or intentional) non-performance, because if the debtor cannot defend himself claiming one of the justified reasons for non-performance of the obligation, it means that the respectively non-performance shall be of a culpable nature, being liable of non-performance.

Unless it is possible, the specific performance of the obligation can always be pursued by the creditor.

When he cannot or has no interest in exercising his right in the form of specific performance of the obligation, the creditor can claim damages, if the debtor is in mora, because he did not perform, without justification (culpably) the obligation, and the other conditions are met – there is a loss, a causal link between the non-performance of the obligation and the loss, and no exculpatory cause of liability has intervened.

Finally, without losing his right to damages and subject to the non-performance of the undertaken obligation is significant, thus depriving the creditor of

what he pursued to obtain from the contract, he can obtain the termination of the contract or, for a less significant non-performance, reduction of the obligation.

The fact that the debtor is in mora represents the circumstance that triggers the mechanism of engaging the debtor's liability, materialized through the forms of attainment of the right of the creditor, and which is characterized by the unjustified (culpable) delay in performance of the undertaken obligation.

4. Specific performance of obligations is the form of attainment of the right of the creditor, an element of its sanction in the form of a material right to action by whose enfettered exercise the creditor aims, when possible, at obtaining the performance promised by the debtor[2].

In essence and in relation to this form of attainment of the right of the creditor – specific performance –, leaving aside the possibility to use the others – damages, termination of the contract and the reduction of the obligations – impossibility of specific performance is the only limit imposed to the creditor. The possibility of specific performance is added to the other prerequisites, common to all forms of attainment of the right of the creditor, i.e. unjustified (culpable) non-performance and mora debitoris.

5. The obligation to pay damages coincides with the traditional concept of contractual liability, which has been defined under the Civil Code of 1864 as the obligation of the debtor to compensate the creditor for the loss caused to the latter due to the non-performance of obligations engendered by a validly concluded contract[3].

Since the conception of the legislator of 2009 is not different from that of those who wrote the Civil Code of 1864, which is a proof of the regulations' virtues of the latter, the timelessness of the definition above is undisputed in the context of the new regulation, with the small amendment that has recently been added in the legal doctrine, according to which the contractual liability is the form of civil liability that

[2] We considered the broad concept of contractual liability. See, in this regard, C. Paziuc, *Răspunderea contractuală. O analiză juridică și economică*, p. 72-73.
[3] M. Eliescu, *Răspunderea civilă delictuală*, (București: Editura Academiei, 1972), p. 7.

consists of compensating the loss caused to the creditor by the unjustified and culpable non-performance of a contractual obligation[4].

The definition is not incompatible with the concept of form of attainment of the right of the creditor. It is the same institution, viewed in reversed angle. The obligation of the debtor to compensate the loss caused by the non-performance of the obligation is the attainment of the of the violated right of the creditor. In other words, there is a corelation between the obligation to pay a certain amount and the right to damages.

The obligation of the debtor to pay damages is subject to the following prerequisites: the unjustified (culpable) non-performance of the contractual obligation; the loss incurred by the creditor; the causal link between the non-performance and the loss caused by it and mora.

6. Taking into consideration its foundation, legal nature, types and the effect it produces, nowadays the termination of the contract can be defined as the retroactive termination or cessation of a bilateral or plurilateral contract, in full or in part, via a decision of the court, unilaterally or de jure, following the unjustified and, in principle, fundamental non-performance of the obligations undertaken by one of the parties.

Unlike specific performance, the obligation to pay damages and unlike the reduction of obligations, the termination of the contract involves a non-performance that is both unjustified and fundamental. In this regard, art. 1551 par. 1 first part of the Civil Code provides that "the creditor is not entitled to terminate the contract if the default of the debtor is of minor importance". The fundamental character of the fault is required for the cessation of the contract as well, except for a repetitive fault, albeit minor. Also, the fundamental or minor, but repetitive non-performance constitutes a prerequisite for the judicial, unilateral and de jure termination of the contract.

7. With respect to conventionally limiting, eliminating, or extending the forms of attainment of the right of the creditor, the parties may, in virtue of the freedom to

[4] V. Terzea, *Răspunderea civilă contractuală*, p. 65.

conclude a contract (art. 11 and 1169 of the Civil Code) and within the limits of public order provisions[5], agree on what they do or do not have the right to do in case of unjustified non-performance of obligations. The agreement of the parties may either regard the existence or breadth of the right of the creditor to specific performance, to damages, to terminate the contract or to reduce his own obligation or the conditions that have to be met for the exercise of these rights – the parties attribute an unjustified nature to otherwise justified non-performances or vice versa (situations where the debtor is held liable for both fortuitous case and force majeure or, on the contrary, is not held liable for a fortuitous case, in spite of a contrary legal provision) or agree upon the mora creditoris or eliminate it.

A clause or a contract by which all forms of attainment of the right of the creditor are eliminated is obviously null and void, because a potestative condition bears on the obligation of the debtor (art. 1403 of the Civil Code), who did not intend to make an effective a declaration of will[6].

8. The 11 years that have passed since the entry into force of the Civil Code do not represent, on the time scale of law, more than a moment, even considering the increasingly fast course of social and economic life, which, let it be said in passing, it often negatively influences the performance of the obligation by the subjects of law in the legal stage. Thus, we appreciate that it is premature to make *de lege ferenda* propositions regarding the institutions analysed in this thesis and we are of the opinion that only a lengthy practice can reveal possible flaws of the current regulation.

---

[5] In this regard, see C. Stătescu, în C. Stătescu, C. Bîrsan, *Drept civil. Teoria generală a obligațiilor*, p. 16-21; P. Vasilescu, *Relativitatea actului juridic civil. Repere pentru o nouă teorie generală a actului de drept privat*, (București: Editura Rosetti, 2003), p. 25-55; L. Pop, *Tratat de drept civil. Obligațiile*, vol. II. *Contractul*, p. 368-382.

[6] G. Boroi, C. Anghelescu, *Curs de drept civil. Partea generală*, (București: Editura Hamangiu, 2011), p. 133; M. Nicolae, *Drept civil. Teoria generală*, vol. I, *Teoria dreptului civil*, (București: Editura Solomon, 2012), p. 373.

BIBLIOGRAPHY

Primary bibliography

- Alexandresco D., *Explicațiunea teoretică și practică a dreptului civil român în comparațiune cu legile vechi și cu principalele legislațiuni străine*, tomul V (Iași: Tipografia Națională, 1898);
- Alexandresco D., *Explicațiunea teoretică și practică a dreptului civil român în comparațiune cu legile vechi și cu principalele legislațiuni străine, tomul VI*, (Iași: Tipografia Națională, 1900);
- Alexandresco D., *Explicațiunea teoretică și practică a dreptului civil român în comparațiune cu legile vechi și cu principalele legislațiuni străine*, tomul V, partea a II-a *Vânzarea (civilă și comercială)*, ed. a doua, revăzută, corectată și mărită după manuscrisul autorului, (București: Atelierele grafice Socec & Co., Soc. Anon., 1925);
- Anghel I.M., Deak Fr., Popa M.F., *Răspunderea civilă*, (București: Ed. Științifică, 1970);
- Baias Fl.A., Chelaru E., Constantinovici R., Macovei I., (coord.), *Noul Cod civil. Comentariu pe articole*, (București: C.H. Beck, 2012);
- Barbero D., *Il sistema del diritto privato, edizione a cura di Liserre e Floridia*, (Torino: UTET, 1988);
- Baudouin J.-L., Jobin P.-G., *Les obligations,* 7^{e} édition, par Jobin P.-G. et Vézina N., *Les obligations 7^{e} édition*, (Québec: Éditions Yvon Blais, 2013);
- Bianca C.M., *Diritto civile, vol. III, Il contratto, terza edizione,* (Milano: Giufré Francis Lefebvre, 2019);
- Bianca C.M., *Diritto civile, vol. IV L'obbligazione, ristampa aggiornata*, (Milano: Giufré Francis Lefebvre, 2019);
- Bianca C.M., *Diritto civile, vol. V La responsabilità, seconda edizione, ristampa aggiornata*, (Milano: Giufré Francis Lefebvre, 2019);
- Bob M.D., *Obligația contractuală în dreptul roman cu trimiteri comparative la Codul civil*, (București: Editura Universul Juridic, 2015);

• Boroi G., Anghelescu C., *Curs de drept civil. Partea generală*, (București: Editura Hamangiu, 2011);

• Boroi G., *Drept civil. Partea generală. Persoanele*, ed. a III-a, revizuită și adăugită, (București: Hamangiu, 2008);

• Cantacuzino M.B., *Elementele dreptului civil*, (București: Editura All Educational, 1998);

• Capitant H., *De la cause des obligations*, (Paris: Librairie Dalloz, 1923);

• Capitant H., Introduction a l'etude du droit civil. Notions g*énérales, cinquième édition*, (Paris: A. Pedone, Editeur, Librairie de la Cour d'Appel et de l'ordre des avocats, 1929);

• Carbonnier J., *Droit civil. 4 Les Obligations*, 12e édition mise à jour, (Paris: Presses Universitaires de France, 1985);

• Cassin R., *De l'exception tirée de l'inexécution dans les rapports synallagmatiques (exception non adimpleti contractus) et de ses relations avec le droit de rétention, la compensation et la résolution*, (Paris: Société du Recueil Sirey, 1914);

• Cătuneanu I.C., *Curs elementar de drept roman, ediția III*, (Cluj-București: Cartea Românească S.A., 1927);

• Chirică D., *Tratat de drept civil. Succesiunile și liberalitățile*, (București: C.H. Beck, 2014);

• Ciceron, *Traité des devoirs*, (Paris: Librariie Hachette, 1877);

• Ciobanu V.M., Nicolae M., (coord.), *Noul Cod de procedură civilă comentat și adnotat, vol. I – art. 1-526*, (București: Editura Universul Juridic, 2013);

• Ciobanu V.M., Nicolae M., (coord.), *Noul Cod de procedură civilă comentat și adnotat, vol. II – art. 527-1.134*, (București: Editura Universul Juridic, 2016);

• Ciobanu V.M., *Tratat teoretic și practic de procedură civilă*, vol. II, (București: Editura Național, 1997);

• Colin A., Capitant H., *Cours éleméntaire de droit civil français*, vol II, (Paris: Dalloz, 1915);

• Cosma D., *Teoria generală a actului juridic civil*, (București: Editura Științifică, 1969);

• Deak Fr., *Curs de drept civil. Teoria generală a obligațiilor*, (Universitatea din București, 1960);

• Deak Fr., *Tratat de drept civil. Contracte speciale*, (București: Actami, 1999);

• Demetrescu P., *Drept civil. Teoria generală a obligațiilor*, (București: Editura Didactică și Pedagogică, 1966);

• Demogue R., *Traité des obligations en général, tome V*, (Paris: Librairie Arthur Rousseau, 1925);

• Deshayes O., Génicon T., Laithier Y.-M., *Réforme du droit des contrats du régime général et de la preuve des obligations; commentaire article par article*, (Paris: LexisNexis, 2016);

• Diaconiță V., *Executarea silită în natură a obligațiilor contractuale în sistemul Codului civil român. Noțiunea și condițiile de drept comun*, (București: Universul Juridic, 2017);

• Dimitresco Gr., *De la condition résolution dans le contrats*, (Paris: V. Giard & E. Brière Libraires Éditeurs);

• Dincă R., *Contracte civile speciale în noul Cod civil. Note de curs*, (București: Universul Juridic, 2013);

• Dincă R., *Protecția secretului comercial în dreptul privat*, (București: Ed. Universul Juridic, 2009);

• Domenget M. L., *Institutes de Gaius contenant le texte et la traduction en regard avec le commentaire au-dessous, nouvelle édition*, (Paris: A. Maresq Ainé, libraire-éditeur, *1866);*

• Eliescu M., *Răspunderea civilă delictuală*, (București: Editura Academiei, 1972);

• Favre A., *Rationalia in primam et secundam partem pandectarum*, tome II, (Chouet, 1619);

• Ghestin J., Jamin Ch., Billiau M., *Traité de droit civil. Les effets du contrat, 3e édition*, (Paris: L.G.D.J., 2001);

• Giorgianni M., *L'inadempimento. Corso di diritto civile, terza edizione*, (Milano: Giuffrè, 1975);

• Girard P.F., *Manuel élémentaire de droit romain*, huitieme édition revue et mise a jour par Félix Senn (Paris: Librairie Arthur Rousseau, 1929);

• Hamangiu C., Rosetti Bălănescu I., Băicoianu Al., *Tratat de drept civil român, vol. II*, (București: All, 1998);

• Hanga V., *Drept privat roman*, (București: Editura Didactică și Pedagogică, 1978);

• Ilie G.-I., *Riscurile în contracte. De la vechiul la noul Cod civil*, (București: Editura Universul Juridic);

• Ionașcu Tr., *Curs de drept civil. Teoria generală a contractelor și obligațiunilor*, Universitatea din București, f.a.;

• *Iustiniani institutiones. Instituțiile lui Justinian*, traducere și note de Hanga V., Bob M.D., (București: Editura Universul Juridic, 2009);

• *Julii Pauli Sententiarum receptarum ad filium, disponibilă la adresa* http://www.histoiredudroit.fr/Documents/Corpus/Suppl%C3%A9ments%207.pdf;

• Larroumet Ch., *Droit civil. Les obligations. Le contrat*, (Paris: Economica, 2003);

• *Les douze livres du Code de l'empereur Justinien, de la seconde édition*. tome 1, traduits en français par Tissot P.-A., (Metz: Behmer, editeur-propriétaire, 1807);

• *Les douze livres du Code de l'empereur Justinien, de la seconde édition*. tome 2, traduits en français par Tissot P.-A., (Metz: Behmer, editeur-propriétaire, 1807);

• M. Hulot, M. Berthelot, *Les cinquante livres du Digeste ou des Pandectes de l'empereur Justinien*, (Metz: Behmer et Lamort, imprimeurs-libraires; Paris: Rondonneau, 1803);

• Malaurie P., Aynès L., Stoffel-Munck P., *Drept civil. Obligațiile* (trad. D. Dănișor), (București: Wolters Kluwer, 2009);

• Mangu F.I., *Răspunderea civilă. Constantele răspunderii*, (București: Ed. Universul Juridic, 2014);

• Marcadé V., *Explication théorique et pratique du Code civil contenant l'analyse critique des auteurs et de la jurisprudence et un traité résumé après le commentaire de chaque titre, huitième édition*, tome quatrième, (Paris, J. Delamotte, Editeur 1892);

• Micescu I., *Drept civil. Teoria convențiunilor și a efectelor lor*, (1924);

• Mirabelli G., *Delle obbligazioni. Dei contratti in generale, terza edizione interamente riveduta e aggiornata*, în *Commentario del codice civile*, (Torino: UTET, 1980);

• Mircioiu Ș., *Transferul dreptului de proprietate prin vânzare. Studiu de drept comparat*, (București: Editura Universul Juridic, 2014);

• Molcuț E., *Drept privat roman, ed. revăzută și adăugită,* (București: Universul Juridic, 2007);

- Molcuț E., Oancea D., *Drept roman*, (București: Casa de editură și presă „Șansa“, 1993);
- Molinaeus, *Tractatus de eo quod interest* (Veneția, 1574), disponibilă la adresa https://books.google.ro/books?id=kCk8AAAAcAAJ&printsec=frontcover&redir_esc=y#v=onepage&q&f=false;
- Nicolae M., *Codex iuris civilis*, tomul I, *Noul Cod civil*, ed. critică, (București: Ed. Universul Juridic, 2012);
- Nicolae M., *Drept civil. Teoria generală*, vol. I, *Teoria dreptului civil*, (București: Editura Solomon, 2012);
- Nicolae M., *Tratat de prescripție extinctivă*, (București: Ed. Universul Juridic, 2010);
- Oancea D., *Introducere în dreptul roman*, (București: C.H. Beck, 2009);
- Oglindă B., *Dreptul afacerilor. Teoria generală. Contractul conform NCC și NCPC*, (București: Universul Juridic, 2012);
- Paziuc C., *Răspunderea contractuală. O analiză juridică și economică*, (București: Universul Juridic, 2019);
- Pineau J., Gaudet S., Burman D., *Théorie des obligations*, (Québec: Éditions Themis, 2001);
- Piperea Gh., *Contracte și obligații comerciale*, (București: C.H. Beck, 2019);
- Piperea Gh., *Drept comercial, vol. II*, (București: C.H. Beck, 2009);
- Planiol M., *Traité élémentaire de droit civil conforme au programme officiel des facultés de droit, onziéme édition, tome II*, (Paris: Librairie générale de droit et de jurisprudence, 1931);
- Planiol M., *Traité élémentaire de droit civil conforme aux programme officiel des facultés de droit (9ème édition),* vol. II, (Paris: Librairie générale de droit et de jurisprudence, 1923);
- Pop A., Beleiu Gh., *Drept civil. Teoria generală a dreptului civil*, (Universitatea din București, 1980);
- Pop L., *Contribuții la studiul obligațiilor civile*, (București: Universul Juridic, 2010);
- Pop L., *Drept civil român. Teoria generală a obligațiilor* (București, Lumina Lex, 1998);

- Pop L., Popa I.F., Vidu S.I., *Tratat elementar de drept civil. Obligațiile*, (București: Universul Juridic, 2012);
- Pop L., *Tratat de drept civil. Obligațiile*, vol III. *Raporturile obligaționale extracontractuale*, (București: Universul Juridic, 2020);
- Pop L., *Tratat de drept civil. Obligațiile*, vol. I, *Regimul juridic general sau Ființa obligațiilor civile*, (București: C.H. Beck, 2006);
- Pop L., *Tratat de drept civil. Obligațiile*, vol. II. *Contractul*, (București: Universul Juridic, 2009);
- Popa I.F., *Rezoluțiunea și rezilierea contractelor în Noul Cod civil*, (București: Universul Juridic, 2012);
- Popa N., *Teoria generală a dreptului*, ediția 3, (București: Editura C.H. Beck, 2008);
- Popescu T.R., Anca P., *Teoria generală a obligațiilor*, (București: Editura Științifică, 1968);
- Pothier R.J., *Traité des obligations, tome premier*, (Paris: Debure, 1761);
- R. Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, (Oxford: Oxford University Press, 1996);
- Răuschi Șt., *Drept civil. Partea generală. Persoana fizică. Persoana juridică*, (Iași: Ed. Fundației „Chemarea", 1993);
- Seneque, *Des bienfaites*, de François de Malherbe, Gentil-homme ordinaire de la Chambre du Roy, (Paris: Antoine de Sommaville, en la petite falle du Palais, 1650);
- *Sfânta Evanghelie după Matei*;
- Smiroldo A., *Profili della risoluzione per inadempimento*, (Milano: Giuffrè, 1982);
- Starck B., Roland H., Boyer I., *Droit civil. Obligations. Contrat, troisième édition*, (Paris: Litec, 1989);
- Starck B., Roland H., Boyer L., *Droit civil. Les obligations. Tome 2, Contrat, 6ème édition*, (Paris: Ed. Litec, 1998);
- Stătescu C., Bîrsan C., *Drept civil. Teoria generală a obligațiilor*, ed. a IX-a revizuită și adăugită, (București: Hamangiu, 2008);
- Stoica V., *Rezoluțiunea și rezilierea contractelor civile*, (București: Editura All, 2004);
- Tăbârcă M., *Drept procesual civil*, vol. I, (București: Universul Juridic, 2008);

• Terré F., Simler Ph., Lequette Yv., *Droit civil. Les obligations, 7e édition*, (Paris: Dalloz, 1999);

• Terré F., Simler Ph., Lequette Yv., *Droit civil. Les obligations*, (Paris: Dalloz, 2005);

• Terré Fr., Simler Ph., Lequette Yv., Chénédé Fr., *Droit civil. Les obligations, 12e édition*, (Paris: Dalloz, 2019);

• Terzea V., *Răspunderea civilă contractuală*, (București: Editura Solomon, 2021);

• Tomulescu C.St., Manual de drept privat roman, (București, 1956);

• Tomulescu C.St., *Manual de drept privat roman*, (București: Litografia Învățământului București, 1958);

• Treitel G.H., *Remedies for breach of contract: a comparative account*, (Oxford: Clarendon Press, 1988);

• Uliescu M. (coord.), *Noul Cod civil. Studii și comentarii*, vol. III, partea I, cartea a V-a Despre obligații (art. 1164-1649), (București: Ed. Universul Juridic, 2014);

• Vasilescu P., *Drept civil. Obligații*, (București: Editura Hamangiu, 2012);

• Vasilescu P., *Drept civil. Obligații*, ediția a II-a, (București: Editura Hamangiu, 2017);

• Vasilescu P., *Relativitatea actului juridic civil. Repere pentru o nouă teorie generală a actului de drept privat*, (București: Editura Rosetti, 2003);

• Zamșa C.E., *Efectele obgliațiilor civile*, (București: Hamangiu, 2013);

• Zilberstein S., Ciobanu V.M., *Drept procesual civil. Executarea silită*, vol. II. (București: Lumina Lex, 1996).

Secondary bibliography

• Almășan A., *Limitarea și excluderea răspunderii contractuale*, în Curierul judiciar nr. 1 (2014);

• Angheni S., *Mecanismul funcționării clauzei penale cu privire specială asupra aplicării acesteia în cazul rezoluțiunii sau rezilierii contractului*, în Dreptul nr. 3 (2014);

- Dincă R., *Promisiunea de a vinde un teren agricol situat în extravilan*, în Revista română de drept privat nr. 3 (2015);
- Dub M., *Clauze privind răspunderea. Anunțuri de limitare a răspunderii*, în Curierul judiciar nr. 9 (2018);
- Dumitru M., *De la teorie la practică în materia reducerii penalității vădit excesive. Repere jurisprudențiale la 6 ani de la intrarea în vigoare a noului Cod civil român*, în Acta Universitatis Lucian Blaga. Iurisprudentia nr. 2 (2017);
- Dumitru-Nica M., *Reducerea clauzei penale vădit excesive – o cutie a Pandorei în dreptul civil român?* în *Liber amicorum Liviu Pop. Reforma dreptului privat român în contextul federalismului juridic european*, (București: Editura Universul Juridic, 2015);
- Floare M., Daunele punitive şi oportunitatea introducerii lor în sistemele de răspundere civilă, în în *Liber amicorum Liviu Pop. Reforma dreptului privat român în contextul federalismului juridic european*, (București: Editura Universul Juridic, 2015);
- Goicovici J., *Executarea coactivă, buna-credință versus culpa creditorului în materia obligației de moderare a prejudiciului*, în Revista română de drept privat nr. 3 (2019);
- Ludușan Fl., *Aspecte teoretice și jurisprudențiale referitoare la reductibilitatea clauzei penale în Codul civil*, în Dreptul nr. 2 (2018);
- Mangu F.I., *Rezoluțiunea, rezilierea și reducerea prestațiilor (I). Reglementarea legală, fundamentul, domeniul de aplicare, poziția în ierarhia „remediilor" contractuale, dreptul de opțiune al creditorului, felurile*, în Pandectele române nr. 1 (2014);
- Mureșan M., *Principiul forței obligatorii a contractului*, în *Contribuția practicii judecătorești la dezvoltarea principiilor dreptului civil român*, vol I, Ionașcu A. și alții, (București: Ed. Academiei, 1973);
- Neculaescu S., *Pierderea șansei – prejudiciu reparabil*, în Revista de studii de drept românesc nr. 4 (2009);
- Oancea D., Vernea S.-A. și Ochea V.-V., *Actio redhibitoria și influența acesteia asupra dreptului românesc*, în M.D. Bob-Bocșan și S. Cercel (coord.), *Despre*

(r)evoluții în drept. Studii dedicate centenarului Vladimir Hanga, (București: Universul Juridic, 2021);

- Ochea V.-V., *Lipsa caracterului cert al creanţei cuprinse într o clauză penală dintr-un act autentificat de notarul public* în Universul Juridic Premium nr. 9 (2019);
- Osti G., *Revisione critica della teoria sulla impossibilita` sopravvenuta della prestazione*, în Rivista di diritto civile nr. 3-5 (1918);
- Pandectele române, nr. 5 (2007);
- Pop L., *Reglementarea clauzei penale în textele Noului Cod civil*, în Dreptul nr. 8 (2011);
- Popa I.-F., *Tirania clauzelor neuzuale*, în Revista română de drept privat nr. 1 (2016);
- Roșioru F., *Consacrarea datoriilor de valoare în noul Cod civil*, în *Liber amicorum Liviu Pop. Reforma dreptului privat român în contextul federalismului juridic european*, (București: Editura Universul Juridic, 2015);
- Stoica V., *Înţelesul noţiunilor de rezoluţiune şi reziliere în Codul civil român. Între dezideratul clarităţii şi fatalitatea ambiguităţii*, în Revista română de drept privat nr. 4 (2013);
- Stoica V., *Modurile de operare a rezoluţiunii şi mecanismul declaraţiei unilaterale de rezoluţiune*, în Revista română de drept privat nr. 5 (2013);
- Stoica V., *Fundamentul rezoluţiunii şi al rezilierii*, în Revista română de drept privat nr. 6 (2013);
- Tallon D., *L'inexécution du contrat: pour une autre présentation*, în RTDciv. (1994)

Case law

- C. Ap. București, IV civ., dec. nr. 2319/19.12.2006;
- Tb. Constanța, II civ., dec. nr. 385/07.05.2014;
- C. Ap. București, V com., dec. nr. 324/11.09.2008;
- Jud. Suceava, sent. civ. nr. 4505/12.10.2012;
- ÎCCJ, dec. nr. 12/08.06.2015;
- ÎCCJ, dec. nr. 23/03.04.2017;
- C.S. Canada, hotărârea din 21.03.1991, cauza Laferrière c. Lawson;

- C. Ap. Galați, I civ., dec. nr. 138/25.06.2020;
- C. Ap. Cluj, II civ., dec. nr. 5197/10.09.2015;
- Tb. Teleorman, civ., dec. nr. 269/20.04.2017;
- Tb. Bihor, II civ., dec. nr. 106/25.01.2016;
- Hotărârea Curții de Casație, camera civilă, din 14 aprilie 1891;
- Cour de Cassation, Chambre civile 1, 20 februarie 2001;
- CLOUT case no. 277 (Oberlandesgericht Hamburg, Germania, 28.02.1997);
- Unilex, Corte di Appello di Milano, Italia, 20.03.1998;
- CLOUT case no. 154 (Cour d'appel de Grenoble, Franța, 22.02.1995);
- CSJ, civ., dec. nr. 2061/2000;
- ÎCCJ, II civ., dec. nr. 552/15.03.2016.

Case law digest, dictionaries, data base, online libraries and other sources

- Pivniceru M.-M, Moldovan C., *Prescripția extinctivă şi principalele acţiuni în justiţie. Practică judiciară*, (București: Ed. Hamangiu, 2007)
- Buletinul Curților de Apel nr. 11 (2015)
- Guțu Gh., *Dicționar latin–român*, ed. a II-a revăzută și adăugită, (București: Humanitas, 2003)
- www.histoiredudroit.fr
- www.gallica.bnf.fr
- www.lege5.ro
- www.scj.ro
- www.rolii.ro
- www.legifrance.gouv.fr
- www.unitral.org
- www.unilex.info
- www.trans-lex.org
- www.ccr.ro

• Rapport au Président de la République relatif à l'ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations

Frequently quoted legislation

• French Civil Code
• Italian Civil Code
• Civil Code of Québec
• Romanian Civil Code
• Romania civil procedure Code
• United Nations convention of contract for the international sale of goods, Vienna, 1980
• Draft Common Frame of Reference
• Principles of European Contract Law
• UNIDROIT Principles, 2016