

Introduction to Macedonian Law of Obligations Foundations, Structure, and European Influences

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Roman Law Foundations

- The earliest conceptual framework of obligations in Macedonian legal tradition is inherited from classical Roman law, particularly the bipartite and later tripartite classification of obligations by Gaius: ex contractu (from contracts) ex delicto (from wrongful acts) ex variis causarum figuris (from various other causes).
- This Roman heritage laid the groundwork for understanding obligations as legal relationships based on enforceable duties.





Contemporary legal tendencies

The text of the Law follows contemporary legal tendencies in the field of the law of contract and, more particularly the ideas accepted in the 1964 Hague Convention on the Uniform Law on the International Sale of goods and the 1964 Hague Convention on formation of Contracts for the International Sale of goods. They were **civil law-oriented following Germanic and Romanist legal traditions and predecessors of the 1980 UN Convention on Contracts for the International Sale of Goods (CISG)**

The relevant example concerns the conditions (prerequisites) for invoking contractual liability. The Law does not provide for debtor's liability for violation of contract in the case of his fault (presumption of liability, the creditor does not need to prove the debtor's fault). In order to be exempted from liability for damage done to the other party to the contract due to violation of contract, the debtor should prove his inability to meet his obligation, or his delay in this respect, as being due to circumstances occurring after the entering into contract which were impossible for him to prevent, eliminate or avoid (a burden of proof within the debtor).



Contents and Scope

The Law consists of two parts: the General Part and the Special Part. The General Part contains provisions relating to the foundations of obligation relations (contracts and torts): their origin, the effect, and termination.

The provisions concerning the interpretation of contracts found in this part apply regardless of the kind of contract in question. The Special Part is composed of various kinds of contracts. The largest number of articles in that Part of the Law cover the contract of sale. Other contracts regulated: exchange, loan, lease, supply of services, construction, transportation of passengers, licensing agreement, deposit, warehousing, commission, mediation, shipping, insurance, guarantee and others.

Macedonian Independence and Legal Continuity

- After the Republic of Macedonia (now North Macedonia) declared independence in 1991, the 1978 Yugoslav Law on Obligations continued to apply provisionally, as per the Constitutional Law on Implementation of the Constitution.



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Adoption of the National Law on Obligations (2001)

- On February 20, 2001, the Macedonian Parliament enacted the Law on Obligations (Zakon za obligacioni odnosi), published in Official Gazette no. 18/2001. While structurally and substantively based on the 1978 Yugoslav law, the 2001 law marked a transition toward a sovereign and EU-aligned legal framework, introducing modernized provisions and greater emphasis on fairness, good faith, and consumer protection



European Influence on the Macedonian Law of Obligations: Focus on the 2008/2009 Reforms

Although not a member of the European Union, North Macedonia has pursued a process of **legal harmonization** with European law since the early 2000s. Nowhere is this more visible than in the field of private law—especially the **Law of Obligations**, which governs contracts, torts, and other sources of civil obligations.

- A significant moment in this alignment came with the **2008 and 2009 amendments** to the **Law on Obligations** which introduced a series of modernized provisions inspired by **European legal standards**, particularly in the areas of **consumer protection**, **fairness in contracting**, and the **duty of good faith**.

Codifying Good Faith and Fair Dealing

One of the key reforms aligned with **EU principles** and soft law (such as the **Principles of European Contract Law – PECL**) was the **strengthening of the duty of good faith** (*начело на совесност и чечност*).

- The reform emphasized that good faith is not only a moral expectation but a **binding legal principle** that applies to the **formation, interpretation, and performance** of contracts.
- This principle mirrors Article 1:201 of the PECL and aligns Macedonian law with the **German BGB** and **Swiss Code of Obligations**, where good faith has long been a cornerstone.

Protection Against Abusive Contract Terms

Following European trends, especially the **EU Directive 93/13/EEC on Unfair Terms in Consumer Contracts**, the amendments enhanced **judicial control over contract terms**:

- Courts were given broader powers to **strike down clauses** that create a **gross imbalance** between the rights and obligations of the parties.
- This protection extended particularly to **consumers** and weaker contractual parties, marking a shift from formal equality toward **substantive fairness**.

Strengthening the Doctrine of Changed Circumstances

The 2008/2009 changes refined the domestic doctrine of **changed circumstances** (*κlausула rebus sic stantibus*), allowing a contract to be **modified or terminated** when unforeseen events fundamentally alter the balance of the contract.

- This principle is comparable to **Article 6:111 of the PECL** and reflects a **flexible, equitable approach** characteristic of modern European private law.

Introduction of Modern Liability Concepts

- In the domain of non-contractual obligations, particularly torts (delict liability), the reforms further clarified: The rules on strict liability (liability without fault), particularly in cases involving dangerous activities or defective products.
- These align Macedonian law more closely with EU product liability standards and the broader European principle of risk-based liability.

Influence of Soft Law Instruments

- The 2008/2009 amendments were not just a domestic modernization—they reflect a clear influence from European legal harmonization projects, such as:
- The Principles of European Contract Law (PECL)
- The UNIDROIT Principles of International Commercial Contracts (PICC)
- The Draft Common Frame of Reference (DCFR)

Although these are not binding EU law, they served as model instruments for legislators aiming to modernize private law in line with European legal culture.

CIVIL LAW CODIFICATION

- ongoing project
 - state project/Commission of eminent professors in the referring area
 - positions taken by the Commission
- 1/consumer law and consumer contracts that are subject to daily changes will not be an integral part of the Civil Code
 - 2/the area of intellectual property rights would not be an integral part of the Civil Code
 - 3/the monistic approach of a law on obligations. A monistic approach means that one unified legal regime applies to obligations regardless of who the parties are—whether private individuals (natural persons), companies or institutions (legal persons), or mixed relationships between them.
 - 4/ no special trade codification for contracts in the trade law - dominant position on the need for a unified regulation of obligations



Structure of the Macedonian Law on Obligations

- The Macedonian Law on Obligations is systematically divided into two **main parts**, following the classical model of continental European civil law systems. This structure reflects a clear distinction between general concepts, sources, and types of obligations:
 - General part
 - Special part