The Recovery of Non-Pecuniary Loss in European Contract Law

This is the first comprehensive work to capture the rise of moral damages (non-pecuniary loss) in European contract law through a historical and comparative analysis. Unique features of this study include the first classification scheme of the systems into liberal, moderate, and conservative regimes; a taxonomy of non-pecuniary loss drawn from a European-wide jurisprudence; and a comprehensive bibliography of the subject. As a leading academic, the author has provided precise and practical insights on Europe’s leading cases, which will be of interest to academic researchers and practitioners alike.

Vernon Valentine Palmer is Thomas Pickles Professor of Law at Tulane University and is Co-Director of the Eason-Weinmann Center for International and Comparative Law.
The Common Core of European Private Law

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For the transnational lawyer the present European situation is equivalent to that of a traveller compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality the *Common Core of European Private Law Project* was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger.

The aim of this collective scholarly enterprise is to unearth what is already common to the legal systems of European Union member states. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.

*A list of books in the series can be found at the end of this volume.*
The Recovery of Non-Pecuniary Loss in European Contract Law

Edited by
Vernon Valentine Palmer
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General introduction  
**Vernon Valentine Palmer**  

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General editors’ preface

This is the fourteenth book in the series The Common Core of European Private Law published as part of the Cambridge Studies in International and Comparative Law. The project was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger.

The methodology used in the Trento project is novel. By making use of case studies, it goes beyond mere description to detailed inquiry into how most European Union legal systems resolve specific legal questions in practice, and to thorough comparison between those systems. It is our hope that these volumes will provide scholars with a valuable tool for research in comparative law and in their own national legal systems. The collection of materials that the Common Core Project is offering to the scholarly community is already quite extensive and will become even more so when more volumes are published. The availability of materials attempting a genuine analysis of how things are is, in our opinion, a prerequisite for an intelligent and critical discussion on how they should be. Perhaps in the future European private law will be authoritatively restated or even codified. The analytical work carried on today by the almost 200 scholars involved in the Common Core Project is also a precious asset of knowledge and legitimization for any such normative enterprise.

We must thank the editors and contributors to these first published results. With a sense of deep gratitude we also wish to recall our late Honorary Editor, Professor Rudolf B. Schlesinger. We are sad that we have not been able to present him with the results of a project in which he believed so firmly.

No scholarly project can survive without committed sponsors. The Italian Ministry of Scientific Research is funding the project, having
recognized it as “research of national interest.” The International University College of Turin with the Compagnia di San Paolo and the Consiglio Nazionale del Notariato allow us to organize the General Meetings. The European Commission has partially sponsored some of our past general meetings, having included them in their High Level Conferences Program. The University of Turin, the University of Trieste, the Fromm Chair in International and Comparative Law at the University of California and the Hastings College of Law, the Centro Studi di Diritto Comparato of Trieste, have all contributed to the funding of this project. Last but not least, we must thank all those involved in our ongoing Trento projects in contract law, property, tort, and other areas whose results will be the subject of future published volumes.

Our home page on the Internet is at http://www.iuctorino.it. There you can follow our progress in mapping the common core of European private law.

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Rudolf B. Schlesinger, Cornell University – University of California, Hastings
This book with its unique focus – the recovery of non-pecuniary loss in European contract law – has proved to be a fascinating and enlightening field of research. Speaking personally, I hope that it helps us understand how and why European law reached its present state, and to appreciate the remarkable rise of non-pecuniary damage in European contract law today.

The recovery of immaterial damage in the field of delict is, of course, an everyday occurrence. Non-pecuniary awards flourish in tort and may be considered the rule rather than the exception. The picture is, however, otherwise in the field of contract. In some European systems, the recovery of “moral” or non-pecuniary damage ex contractu is not permitted; in others, it is allowed only exceptionally or only when specifically authorized by legislation. In certain national systems, contractual awards are apparently freely permitted, though the award levels are not generous. Through historical research, we have attempted to bring to light the background of this situation in the modern law, and through the Common Core’s case study methodology, we have sought to present the modern law in greater detail. We have attempted to pinpoint, distinguish, and compare the national differences and similarities, and ultimately to classify national approaches into some kind of intelligible order.

This wide study takes into account twelve European systems. It began in 2009 and has taken nearly six years to reach publication. It confirms once again that broad international and comparative efforts are complex, time consuming, and presuppose the good will of many scholars. In the latter respect, we were particularly blessed. I have many people to thank, but first and foremost I must thank my colleagues, the fifteen contributing scholars from around Europe whose
kindness and expertise made the project enjoyable and fruitful. These are Ernst Karner and Barbara C. Steininger (Austria), Krassimir Mitev and Valentina Bineva (Bulgaria), Solène Rowan (France), Florian Wagner-von Papp (Germany), Eugenia Dacoronia (Greece), Esther Engelhard (The Netherlands), Marta Infantino (Italy), Tomasz Pajor (Poland), Adélaïde Menezes Leitão (Portugal), Beatriz Gregoraci Fernandez (Spain), Joel Samuelsson (Sweden), and Dorota Leczykiewicz (United Kingdom). I am also deeply grateful to Professor Nils Jansen (Germany) who contributed an entire chapter on the historical background of the subject. I am thankful to all for their friendship, diligence, patience, and timeliness, and for the discussions and exchanges from which I learned so much. It saddens me to report that during the course of this study our dear colleague, Professor Tomasz Pajor, passed away unexpectedly. He will be greatly missed.

My sincere thanks go to the general editors Mauro Bussani and Ugo Mattei, who founded the Common Core series, encouraged this particular research, and provided all concerned with the inspiration to undertake it. I also owe a special debt of gratitude to my research assistants at Tulane, Olivia Philipp, Justine Palacios, and Michael Razeeq, for their invaluable assistance over the past two years. Finally, I wish to thank Tulane University and the Tulane Law School for support of every kind, and the Eason Weinmann Center for International and Comparative Law of Tulane University for the special financial assistance that allowed the research team to meet in person in Turin, Italy, to discuss the project.

Vernon Valentine Palmer

New Orleans

November 2014
France

Article 1137 of the Civil Code:

The obligation to be vigilant in caring for the thing, whether the agreement has as its object an advantage for one of the parties or whether it has as its object their common advantage, requires him who is responsible therefor to bring all the care of a good father of a family.

This obligation is more or less extensive relative to certain contracts, whose effects in this regard are explained under the Titles which concern them.

Art. 1147 of the Civil Code:

A debtor is judged liable for the payment of damages, either by reason of the inexecution of the obligation or by reason of delay in the execution, whenever he does not prove that the inexecution came from an outside cause (cause étrangère) which cannot be imputed to him, and further that there was no bad faith on his part.

Art. 1149 of the Civil Code:

Damages due to a creditor are, in general, the loss which he incurred and the gain of which he was deprived, apart from the hereinafter exceptions and modifications.

Art. 1150 of the Civil Code:

A debtor is held only to damages which were foreseen or which could have been foreseen at the time of the contract, when the obligation is not executed due to fraud (dol).
Art. 1382 of the Civil Code:
Every act whatever of man which causes damage to another obliges him by whose fault it occurred to repair it.

Art. 1610 of the Civil Code:
If the seller fails to make delivery within the time agreed between the parties, the buyer may, at his choice, demand rescission of the sale or to be put in possession, if the delay resulted only from an act of the seller.

Art. 1611 of the Civil Code:
In all cases, the seller is to be liable for damages if a prejudice results to the buyer from failure of delivery in the time agreed.

Art. 1719 of the Civil Code:
The lessor is obligated, by the nature of the contract, and without there being need of any particular stipulation:

1. To deliver to the lessee the thing leased;
2. To maintain such thing in condition to serve the use for which it was rented;
3. To provide peaceful enjoyment to the lessee for the duration of the lease;
4. To assure also the permanence and quality of plantings.

Art. 1720 of the Civil Code:
The lessor is required to deliver the thing in a good state of repair in all respects.
He must make, throughout the duration of the lease, all repairs which may become necessary, other than those to be made by the tenant.

Art. 1927 of the Civil Code:
The depositary must observe, in the keeping of the thing, the same care that he observes in the keeping of things which belong to him.

Art. 1928 of the Civil Code:
The provision of the preceding Article is to be applied with greater strictness:

1. If the depositary himself offered to receive the thing;
2. If pay was stipulated for the keeping;
3. If the deposit was made only in the interests of the depositary;
4. If it was agreed expressly that the depositary would answer for any kind of fault.

_Art. 6 of the “Law of the 6 July 1989 for the Improvement of the Relationship between Landlords and Tenants”:_

The lessor must provide the lessee with decent accommodations which contains no obvious risk to his physical safety or to his health, and which is habitable.

**Greece**

*Greek Constitution*

**Article 5 § 1:**

All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages.

**Art. 17 § 1:**

Property is under the protection of the State; rights deriving therefrom, however, may not be exercised contrary to the public interest.

**Art. 24 § 1:**

The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development. Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy.

**Art. 25 § 1:**

The rights of the human being as an individual and as a member of the society and the principle of the welfare state rule of law are guaranteed by the State. All agents of the State shall be obliged to ensure the
unhindered and effective exercise thereof. These rights also apply to the
relations between individuals to which they are appropriate. Restrictions of any kind which, according to the Constitution, may be
imposed upon these rights, should be provided either directly by the
Constitution or by statute, should a reservation exist in the latter’s
favour, and should respect the principle of proportionality.

§ 2. The recognition and protection of the fundamental and inalienable rights of
man by the State aims at the achievement of social progress in freedom and
justice.
§ 3. The abusive exercise of rights is not permitted.
§ 4. The State has the right to claim of all citizens to fulfil the duty of social and
national solidarity.

Greek Civil Code

Article 57:

Right to one’s personality.
He who suffers an illegal invasion of his personality is entitled to ask for
the cessation of the offence and for an injunction against the commis-
sion of the offence in the future. If the offence concerns the personality
of a deceased, the right belongs to the spouse, descendants, ascendants,
brothers and sisters and testamentary heirs. An additional claim for
monetary compensation according to the provisions of delictual liabi-

dility is not excluded.

Art. 58:

Right to one’s own name.
If the right of a person to bear a name is disputed or if someone uses a
name unlawfully, any person entitled to the name, may seek the cessa-
tion of the offence and its commission in the future. A claim for
damages in accordance with the provisions of delictual liability is not
excluded.

Art. 59:

In the cases of both previous articles the court may by its judgment, after
the request of the person who has been offended and taking under
consideration the type of the offence, also order the person responsible
to furnish reparation of the moral harm suffered by the person offended.
This reparation consists of the payment of a sum of money, of a publica-
tion or of any other appropriate measure in the circumstances.
Art. 147:

Declaration resulting from fraud.
Whoever has been led by fraud into a declaration of the will has the right to ask for the annulment of the juridical act. If the declaration of will is addressed to someone else and the fraud was committed by a third party, the annulment can only be sought if the other party was aware or should have been aware of the fraud.

Art. 149:

The person who was the victim of fraud has the right, in addition to the annulment of the declaration of will, to ask for damages according to the general tort provisions.

Art. 281:

Abuse of right.
The exercise of a right is prohibited when it manifestly exceeds the limits dictated by good faith, or good morals, or the social or economic purpose of the right.

Art. 288:

The debtor is obliged to effect the performance as good faith requires, after consideration also of common usage.

Art. 299:

Immaterial damage.
For non-pecuniary damage, reparations in money shall be due only in the cases provided for by law.

Art. 341:

Fixed date.
If the fulfillment of the performance by a fixed date has been agreed upon, the debtor is in default by the mere elapse of the fixed date.

Art. 343:

Consequences.
The debtor in default, in addition to the delayed performance, is obliged to compensate the creditor for the damage he suffered because of the delay.
Art. 914:

Concept.
A person who unlawfully and culpably causes damage to another shall be liable for damages.

Art. 924:

Liability of the keeper of an animal.
The keeper of an animal is liable for the damage caused by the animal to a third party. If the damage was caused by a domestic animal which is used for the profession, the guarding of the house or the nutrition of the keeper, the keeper is not liable if he proves that he is not burdened with any fault regarding the guarding and the supervision of the animal.

Art. 928:

In case of cause of death.
In case of the death of a person, the tortfeasor is obliged to pay the medical and funeral expenses to the person on whom the obligation of bearing such expenses lies according to the law. The tortfeasor is also obliged to pay damages to the person who is entitled by law to claim maintenance or the performance of services by the victim.

Art. 929:

In case of injury to the body or health of a person.
In case of injury to the body or health of a person, damages include, apart from the medical expenses and the damage already suffered, whatever the victim will be deprived of in the future or he will have to additionally spend because of the increase in his expenses. Damages must be also paid to the third party who was entitled by law to claim the performance of services by the victim and is now deprived of them.

Art. 931:

The disablement or disfigurement of the victim is particularly taken into consideration in the award of damages to be paid, if this disablement or disfigurement affects the victim’s future.
Art. 932:
Reparation for non-pecuniary damage.
In case of tort, independently from the damages for pecuniary damage, the court may award according to its judgment justifiable reparation in money for moral damage. This happens especially for the person who suffered an attack of his health, honor or chastity or who was deprived of his liberty. In case of the death of a person, this reparation in money may be adjudicated to the victim’s family due to their distress and anxiety of mind.

*Introductory Law of the GCC*

Art. 104:
For acts or omissions of the organs of the State, which refer to private law legal relations or are related to private property, the State is liable according to the provisions of GCC on legal persons.

Art. 105:
The State is liable to pay damages for illegal actions or omissions of its organs during the exercise of the public authority entrusted to them, unless the action or omission was made in breach of a provision existing in favour of the general interest. The culpable organ is also jointly liable in parallel to the State, with the reservation of the special provisions for the liability of ministers.

Art. 106:
The provisions of the two previous articles for the liability of the State also apply for the liability of municipalities, communities or other legal persons of public law for actions or omissions of organs in their services.

*Consumer Protection Act*

Article 8 §1 of l. 2251/1994, as replaced by Art. 10§1 of l. 3587/2007:
The provider of services is liable for any pecuniary damage or moral harm illegally and culpably caused, by his act or omission, while providing his services to the consumer. By supplier of services is meant whoever, in the course of the exercise of a professional activity, supplies a service in an independent way.
Italy

Civil Code Articles

Art. 1176:
In performing obligations the debtor shall use the care expected from a reasonable person.
In performing obligations inherent to the exercise of a professional activity the standard of care shall be evaluated in consideration of the nature of the activity carried out.

Art. 1218:
The debtor who does not exactly render due performance is liable for damages unless he proves that the non-performance or delay was due to impossibility of performance for a cause not imputable to him.

Art. 2059:
Non-patrimonial damages shall be awarded only in cases provided by law.

Art. 2087:
The entrepreneur is required to adopt measures necessary to protect the physical and mental well-being of employees in the exercise of the enterprise.

Italian Constitution

Art. 2:
The Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.

Art. 13(1):
Personal liberty is inviolable.

Art. 29:
The Republic recognises the rights of the family as a natural society founded on matrimony.
Art. 30(1):
It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock.

Art. 35(1):
The Republic protects work in all its forms and practices.

Consumer Code

Art. 93:
1. Subject to the obligations provided for in the Article above, in the event of failure to perform or inadequate performance of the obligations assumed upon sale of the package, the organiser and retailer shall be required to pay damages, according to their respective liabilities, if they fail to prove that their partial or total failure to meet their contractual obligations was caused by impossibility to perform due to circumstances beyond their control.
2. If an organiser or retailer uses other service providers, he shall still be liable for damages arising to consumers, without prejudice to the right of the organiser and/or retailer to pursue those other suppliers of services.

Art. 94:
1. Damages for personal injury arising out of any partial or total failure to meet contractual obligations for services covered by a travel package tour may be paid up to the limits established by International Conventions thereon, of which Italy or the European Union are members, and in particular within the limits provided for by the Warsaw Convention dated 12 October 1929 on international air transport, implemented by Law no. 841 of 19 May 1932, the Berne Convention of 25 February 1961 on rail transport, implemented by Law no. 806 of 2 March 1963, and the Brussels Convention of 23 April 1970 (C.C.V.), implemented by Law no. 1084 of 27 December 1977, for all other possible liability of the organiser and/or vendor, as implemented in current enacted law or up to the limits established by further conventions, implemented in Italian legislation, of which members of the European Union or the European Union itself are part.
2. The right to compensation for damages shall expire three years after the traveller returns to his point of departure, save for the period of eighteen or twelve months with regard to failure to provide transport services included in the package, as covered by Article 2951 of the Civil Code.
3. Any term establishing limits on compensation lower than that referred to at paragraph 1 shall be null and void.

Art. 95:

1. Contracting parties may agree in writing (always excepting the application of Article 1341 of the Civil Code and Articles 33–37 of the Code) to limitations to compensation for damages other than personal injury, arising out of partial or total failure to meet their contractual obligations in regard of services in a travel package tour.

2. If the limitation pursuant to paragraph 1 is lower than the amount provided for by Article 13 of the International Convention on Travel Contracts (C.C.V.) signed in Brussels on 23 April 1970, and implemented by Law no. 1084 of 27 December 1977, it shall be unenforceable.

3. Unless otherwise agreed, compensation for damages shall be allowed up to the limits provided for by Article 13 of the International Convention on Travel Contracts signed in Brussels on 23 April 1970 (and implemented by Law no. 1084 of 27 December 1977), and by Articles 1783–1786 of the Civil Code.

4. The right to compensation for damages shall expire one year after the traveller returns to the place of departure.

Portugal

Civil Code (1966)

Delict

Article 483:

(General Principle)

1. Whoever, through willful misconduct or mere negligence, unlawfully infringes upon the rights of another person or any legal provision intended to protect interests of others, must compensate the injured party for damage arising from the violation.

2. The obligation to pay compensation independent of fault, arises only in cases specified by law.

Art. 484:

(Action injurious to personal standing or good name)

Whoever affirms or disseminates a fact capable of prejudicing the credit or the good name of any person, private individual, or collective, is responsible for the damage caused.
Art. 485:
(Advice, recommendations or information)

1. Mere advice, recommendations or information do not confer liability on whoever gives it, even though there may be negligence on their part.
2. The obligation to compensate exists, however, when the responsibility for damages has been assumed, when there is a legal duty to give advice, recommendation or information and this has been done with negligence or intent to cause harm, or when the conduct of the agent constitutes a punishable act.

Art. 486:
(Omissions)

Mere omissions give rise to an obligation to compensate for damage when, regardless of other legal requirements, there is a duty, by law or by virtue of a legal act, not to undertake the omitted act.

Art. 487:
(Fault)

1. It is incumbent on the injured person to prove the fault of the person who caused the injury, unless there is a legal presumption of fault.
2. Fault is assessed, in the absence of other legal criterion, by reference to the diligence expected of a dutiful paterfamilias, in light of the circumstances of each case.

Art. 494:
(Limitation of indemnity in the case of mere negligence)

When the responsibility is based upon mere fault, the reparation will be able to be set, equitably, in a sum inferior to what would correspond to the actual damages, since the degree of culpability of agent, economic situation of the agent or the injured part and the others circumstances of the case justify it.

Art. 496:
(Non-pecuniary damage)

1. For the determination of compensation, regard must be had to non-pecuniary damage which, due to its seriousness, deserves protection of the law.
2. In the event of death of the victim, the right to compensation for non-material damage shall be available, jointly, to the spouse who is not legally separated and to the children or other descendants;
failing the latter, to the parents or other ascendants; and, finally, to
the brothers sisters or nephews and nieces representing them.

3. The amount of compensation shall be fixed equitably by the court,
having regard in any event to the circumstances mentioned in Art.
494; in the event of death, regard may be had not only to non-
material damage suffered by the victim but also to such damage
suffered by the persons entitled to compensation by virtue of the
foregoing paragraph.

Contract

Art. 763:
(Full performance)

1. Performance must be made fully and not in part, unless otherwise
agreed upon by the parties or imposed by law or custom
2. The creditor has, however, the right to demand a partial perfor-
mance; a demand for partial performance does not deprive the
debtor of the opportunity to render full performance.

Art. 798:
(Liability of the debtor)
The debtor who knowingly fails to comply with his obligations is
responsible for harm caused to the creditor.

Art. 799:
(Presumption of fault and assessment of fault)

1. It is incumbent on the debtor to prove the non-performance or defec-
tive performance of the obligation was not attributable to his own fault.
2. Fault is assessed in the terms applicable to civil liability.

Art. 800:
(Acts of the legal representatives or assistants)

1. The debtor is liable to the creditor for the acts of his legal representa-
tives or of the people that he utilizes for the performance of an
obligation, as if such acts were undertaken by the debtor.
2. Liability can be conventionally excluded or limited by way of prior
agreement between the interested parties, provided that the exclu-
sion or limitation does not include acts that represent a breach of
duties established by rules of public order.
Art. 804:
(General Principle)

1. Mere delay in performance creates for the debtor the obligation to compensate the creditor for damages caused.
2. The debtor is considered to be in delay when, for cause that may be imputed to him, the performance, if still possible, was not completed in due time.

Art. 808:
(Loss of interest of the creditor or refusal to perform)

1. If the creditor, as a consequence of delay, loses the interest that he had in performance of the obligation, or the performance was not rendered within the time reasonably established by the creditor, the obligation is considered for all purposes as not performed.
2. Loss of interest in the performance if assessed objectively.

Spain

Civil Code Articles

Article 1101:

Those who, in the performance of their obligations, act with fraud, negligence, or delay, and those who act in contravention of the provisions of the obligation, are liable for the resulting damages.

Art. 1102:

Liability arising from fraud is exigible in all obligations. The waiver of the action to enforce it is null.

Art. 1103:

Liability arising from negligence is likewise exigible in the performance of all types of obligations, but it may be mitigated by the courts according to the circumstances of each particular case.

Art. 1104:

Fault or negligence on the part of the debtor consists in the failure to exercise the diligence demanded by the nature of the obligation and corresponding to the circumstances of the persons, time, and place.
When the obligation fails to stipulate the diligence that must be exercised in performing it, the diligence corresponding to a prudent administrator shall be observed.

**Art. 1105:**
Outside of the instances expressly mentioned in the law, and those stipulated in the obligation involved, no person shall be liable for events that could not have been foreseen or that, if foreseen, were inevitable.

**Art. 1106:**
Reparation in damages shall comprise not only the value of the loss sustained, but also that of the profits that the creditor failed to obtain, with the exception of the provisions set forth in the following articles.

**Art. 1107:**
The obligor in good faith is liable for damages that were foreseen, or were foreseeable, at the time the obligation was contracted, and for those that are a necessary consequence of the obligor’s failure to perform.

In case of willful misconduct, the obligor shall be liable for all damages known to be derived from his failure to perform the obligation.

**Art. 1149:**
The divisibility or indivisibility of things that are the object of obligations having only one obligor and one obligee does not alter or modify the principles of Chapter 2 of this Title.

**Art. 1461:**
The seller must deliver and warrant the thing that is the object of the sale.

**Art. 1554:**
The lessor is obligated to:
1. Deliver to the lessee the thing that is the object of the contract.
2. Make thereon, during the lease, all necessary repairs in order to preserve it in a state that renders it fit for the use to which it was intended.
3. Maintain the lessee in the peaceful enjoyment of the lease during the entire term of the contract.
Art. 1588:
The execution of a work can be contracted with the stipulation that the
builder will contribute only his work or industry, or that he will also
furnish the materials.

Art. 1589:
If the builder obligated himself to furnish the materials, he shall bear
the loss in case the construction is destroyed before being delivered,
unless there has been delay in receiving it.

Art. 1590:
One who has obligated himself to furnish his work or industry only
cannot demand any compensation if the construction is destroyed
before delivery, unless there has been delay in receiving it, or unless
the destruction arose from the poor quality of the materials, provided
that he gave the owner due notice of this circumstance.

Art. 1591:
The contractor of a building that is ruined due to vices of construction is
liable in damages if such ruin occurs within ten years from the comple-
tion of the construction. The architect directing the construction shall
have the same liability, and for the same length of time, if the ruin is due
to vices of the ground or defective direction.

If the cause was the noncompliance by the contractor with the
conditions of the contract, the action for damages shall last fifteen years.

Art. 1592:
One who commits himself to execute a work by parts or measure, may
demand that the owner receive it in parts, and pay therefor proportio-
nately. The part paid for shall be presumed approved and received.

Art. 1593:
An architect or a contractor that, for a lump sum, undertakes the
construction of a building, or any other work, to be done in accordance
with a plan agreed upon with the owner of the ground, may not
demand an increase in the price, even if the price of the materials or
wages has increased; but he may do so when any change increasing the
work is made in the plans, provided that the owner has given his
authorization thereto.
Art. 1594:
The owner may desist at will from the construction of the work even after it has commenced, by indemnifying the contractor for all of his expenses and labour, and for profits he might have obtained from the same.

Art. 1595:
When a certain work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded by the death of such person.

In such a case, the owner must pay to the heirs of the contractor, in proportion to the price agreed upon, the value of the part of the work executed, and that of the prepared materials, provided he may obtain some benefit from such materials.

The same rule shall be applied if the person who contracted to execute the work cannot finish it for any cause independent of his will.

Art. 1596:
The contractor is responsible for the work performed by the persons under his employ.

Art. 1597:
Those who furnish their labour and materials for a particular job undertaken by a contractor for a lump sum have no action against the owner, except for the amount that the owner may owe the contractor at the time suit is filed.

Art. 1598:
When it is agreed that the work is to be done to the satisfaction of the owner, in the absence of his acceptance the approval is considered to be reserved for the appropriate expert judgment.

If the person who is to approve the work is a third party, his decision shall be final.

Art. 1599:
In the absence of an agreement or custom to the contrary, the price for the work must be paid upon delivery.
Art. 1600:
One who has executed a work on a movable thing has the right to retain the same in pledge until he is paid therefor.

Art. 1758:
A deposit is constituted from the moment a person receives a thing belonging to another under the obligation of keeping and returning the same.

Art. 1759:
A deposit may be constituted judicially or extrajudicially.

Art. 1760:
Deposit is a gratuitous contract, in the absence of a contrary stipulation.

Art. 1761:
Only movable things may be the object of a contract of deposit.

Art. 1762:
Extrajudicial deposit is necessary or voluntary.

Art. 1763:
Voluntary deposit is the one made by consent of the depositor. A deposit may also be made by two or more persons, who believe themselves to be entitled to the thing given in deposit, by placing it in the hands of a third person, who is to deliver the thing, in the proper case, to the person to whom it belongs.

Art. 1764:
If a person having capacity to contract accepts a deposit made by one lacking capacity, the person accepting the deposit is subject to all the obligations of the depositary, and may be compelled to return the thing by the tutor, curator, or administrator of the person that made the deposit, and even by the depositor himself if he becomes capable.

Art. 1765:
If the deposit has been made by a capable person to one lacking capacity, the depositor shall only have a right to recover the thing deposited while it remains in the possession of the depositary, or to demand from
the latter payment of the amount by which he has enriched himself with the thing or with the price.

Art. 1766:
The depositary is obligated to keep the thing and return it to the depositor, or his assigns, or to the person designated in the contract when he is requested to do so. His liability with respect to the guarding and loss of the thing shall be governed by the provisions of Title I of this Book.

Art. 1767:
The depositary may not avail himself of the use of the thing deposited without express permission from the depositor.

Otherwise, he shall be liable in damages.

Art. 1768:
Where the depositary has permission to avail himself of or use the thing deposited the contract ceases to be one of deposit and becomes a loan or commodatum.

Permission is not presumed; its existence must be proven.

Art. 1769:
When the thing given in deposit is delivered closed and sealed the depositary is bound to return it in the same form, and he shall be liable in damages if the seal or lock is broken by his fault.

The depositary shall be presumed to be at fault in the absence of proof to the contrary.

Concerning the value of the thing deposited, when the forcible opening is chargeable to the depositary the statement by the depositor concerning value shall be accepted, in the absence of proof to the contrary.

Art. 1770:
The thing deposited shall be returned with all its products and accretions.

When the thing deposited is money the provisions of Article 1724 regarding the agent shall be applied to the depositary.

Art. 1771:
The depositary cannot demand that the depositor prove that he is the owner of the thing deposited.
However, should he discover that the thing is stolen and ascertains the identity of its true owner, he must inform such person of the deposit.

If, in spite of this, the owner fails to claim the thing within a month, the depositary shall be free of all liability by returning the thing deposited to the person from whom he received it.

**Art. 1772:**

When there are two or more depositors, who are not solidary, and the thing is susceptible of division, each one of them may only demand his part.

When there is solidarity, or where the thing cannot be divided, the provisions of Articles 1141 and 1142 of this Code shall govern.

**Art. 1773:**

When, after making the deposit, the depositor loses the capacity to contract, the thing given in deposit can be returned only to those having the administration of the assets and rights of the depositor.

**Art. 1774:**

When the place of return is designated at the time the contract is entered into, the depositary must carry the thing deposited to that place; however, expenses related to the transfer shall run on the depositor’s account.

Where no place for the return has been designated, the return must be made at the place where the thing deposited is found, even if it is not the same place where the deposit was made, provided that the depositary has not acted in bad faith.

**Art. 1775:**

The thing given in deposit must be returned to the depositor upon demand, even if the contract has set a specific term or time for the return.

This provision shall not apply when the thing given in deposit has been attached while in the depositary’s possession, or where the depositary has been notified of the opposition of a third party to the restitution or removal of the thing given in deposit.
Art. 1776:
A depositary having just cause for not keeping the thing given in deposit may return it to the depositor even before the designated time. If the depositor refuses to take the thing, the depositary may obtain court authority to deposit it in the registry of the court.

Art. 1777:
The depositary who, on account of force majeure, has lost the thing given to him in deposit and obtained another one in its place, is obligated to deliver the latter to the depositor.

Art. 1778:
The depositary’s heir who has sold in good faith a thing which he did not know to have been deposited, is only obligated to return the price received therefor, or to assign his rights against the buyer in case the price has not been paid to him.

Art. 1779:
The depositor must reimburse the depositary for all expenses incurred in the preservation of the thing deposited and to indemnify him for all injuries that he may have suffered as a result of the deposit.

Art. 1780:
The depositary may retain the thing given in deposit in pledge until payment in full of what is owed to him on account of the deposit.

Art. 1781:
A deposit is necessary:

1. When it is made in compliance with a legal obligation.
2. When it takes place as a result of a calamity, such as fire, ruin, pillage, shipwreck, or other similar cases.

Art. 1782:
A deposit comprised in the first number of the preceding article shall be governed by the provisions of the law establishing it and, in their absence, by those governing voluntary deposit. A deposit comprised in number two shall be governed by the rules on voluntary deposit.
Art. 1783:
The deposit of effects, made by travelers, in inns and hostelries, shall also be considered a necessary one. The keepers of inns and hostelries shall be liable for them as depositaries of such things, provided that notice thereof has been given to them or to their clerks of the effects introduced in their establishment and the travelers, on their part, observe the precautions that said innkeepers or their substitutes may have established concerning the care and vigilance of their effects.

Art. 1784:
The liability to which the preceding article refers comprises damages to the effects of travelers caused by the servants or clerks of the keepers of inns or hostelries, as well as strangers, but not for those arising from armed robbery or by any other event of force majeure.

Art. 1902:
A person who, by act or omission, causes damage to another by fault or negligence must repair the damage caused.

Art. 162.2 Consumer Act:
Organizers and retailers packages are also liable for the damages suffered by consumers and users as a result of the non-execution or defective execution of the contract.

Constitution, Art. 10:
1. The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.
2. Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.

Constitution, Art. 24:
1. All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense.
2. Likewise, all have the right to the ordinary judge predetermined by law; to defense and assistance by a lawyer; to be informed of the charges
brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defense; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent. The law shall specify the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding allegedly criminal offences.

**Germany**

*German Civil Code (Bürgerliches Gesetzbuch, BGB)*

§ 249 Measure and quantification of compensation:

1. Whosoever is liable to compensate loss has to restore the situation that would exist but for the circumstance that gave rise to the claim for compensation.
2. Where damages have to be paid because of an injury to a person or damage to property, the creditor may demand the amount of money necessary as an alternative to restoration. Where damage to property is concerned, the amount of money necessary pursuant to the first sentence of this provision includes value-added tax if and to the extent that it has actually been incurred.

§ 251 Immediate right to damages in money:

1. To the extent that restoration is impossible or insufficient to compensate the creditor, the person liable for damages has to compensate the creditor in money.
2. The person liable for damages may compensate the creditor in money if restoration would only be possible if disproportionate expenses are incurred. Expenses incurred for the veterinary care of an injured animal are not disproportionate merely because they substantially exceed its value.

§ 252 Lost profits:

The damage to be compensated also includes lost profits. Profits are deemed ‘lost’ if they could have been anticipated with sufficient likelihood on the basis of the usual course of events or the special circumstances of the case, in particular the preparations made and precautions taken.
§ 253 Non-pecuniary loss:

(1) Compensation for loss that is non-pecuniary can only be claimed in the cases specified by statute.
(2) Where compensation is due for injury to body, health, freedom or sexual self-determination, the injured party can claim an equitable amount of monetary compensation even for loss that is not of a pecuniary nature.

§ 276 Responsibility of the debtor:

(1) The debtor is responsible for intentional and negligent conduct, unless a stricter or more lenient standard of liability is either explicitly prescribed or implicit in the terms of the relationship between the debtor and the creditor, in particular where the debtor gave a guarantee or assumed the risk of procuring the object of the obligation. §§ 827 and 828 are applicable mutatis mutandis.
(2) Negligence is the failure to exercise the duty of care considered objectively reasonable.
(3) The debtor cannot release the creditor in advance from liability for intentional conduct.

§ 277 Standard of care in one’s own affairs:
Where a person is only liable for the standard of care he exercises in his own affairs, he is not excused from liability for gross negligence.

§ 278 The debtor’s responsibility for third parties’ fault:
The debtor is responsible for the fault of his legal representative and of the persons he engages for the performance of his obligations as if it were his own. § 276(3) does not apply.

§ 280 Damages for breach:

(1) If the debtor breaches a duty arising from a relationship from which obligations arise, the creditor can demand damages for the loss caused. This does not apply if the debtor is not responsible for the breach.
(2) The debtor can demand damages for delayed performance only where the additional requirements of § 286 are fulfilled.
(3) The debtor can demand damages in lieu of performance only where the additional requirements of § 281, § 282 or § 283 are fulfilled.
§ 281 Damages in lieu of performance for failure to perform or failure to perform as promised:

(1) If the debtor does not perform, or does not perform as promised, the creditor can demand damages in lieu of performance where the requirements of § 280(1) are fulfilled, provided he has fixed an additional period of time for performance and this period has passed unsuccessfully.

(2) There is no need to fix an additional period of time for performance where the debtor seriously and finally refuses to perform, or where special circumstances are present which justify the immediate claim for damages.

§ 284 Reimbursement for frustrated expenses:
Instead of damages in lieu of performance, the creditor can demand reimbursement of expenses which he reasonably made in reliance on the occurrence of the performance, except if their purpose could not have been achieved even if the debtor had not been in breach.

§ 286 Debtor’s delay in performance:

(1) Where the debtor does not perform even after a notice of warning, which has been given after performance was due, the debtor is in default by delay. The serving of a writ of action for performance and of an order of payment in summary debt proceedings have the same effect as a notice of warning.

(2) The notice of warning is not required where
   1. the time for performance is specified by calendar,
   2. […]
   3. the debtor seriously and finally refuses to perform,
   4. the immediate default is justified by special circumstances, following a balancing of the interests of both parties.

(3) […]

(4) The debtor does not fall into default if the performance was delayed for reasons for which he is not responsible.[…]
§ 651f Damages:

(1) The traveller can demand damages for non-performance irrespective of any reduction in price or termination, except if the defect of the package travel tour is caused by a circumstance for which the tour organizer is not responsible.

(2) Where the package travel tour is completely spoilt or substantially impaired, the traveller can also demand a just compensation in money for wasted vacation time.

§ 823 Duty to pay damages:

(1) Whosoever unlawfully injures, intentionally or negligently, the life, body, health, freedom, property or other right of another person, has an obligation to the other person to compensate the resulting loss.

(2) The same obligation is incurred by a person who infringes a statutory provision that is intended to protect another person. Where the infringement of the statutory provision does not require fault, the obligation to compensate loss only arises where there is fault.

§ 826 Intentional immoral infliction of loss:

Whosoever intentionally inflicts loss on another person in a manner that is contrary to good morals has an obligation to compensate the loss.

General Equality Act (Allgemeines Gleichstellungsgesetz, AGG)

§ 21 Claims:

(1) The person discriminated against has a claim that the discrimination be ended, notwithstanding further claims. Where there is a sufficient probability of further discrimination, the person discriminated against has a claim for an injunction.

(2) Where the prohibition against discrimination was infringed, the infringer is liable for the resulting loss. This is not the case where the infringer is not responsible for the breach of duty.
The person discriminated against has a claim for a just compensation in money for non-pecuniary losses. […]

**Tariffs**

(1) Tables of awards for non-pecuniary loss for injuries to health and body:


(2) Tariffs for the lost opportunities of use of cars:


(3) Table for the percentage reduction of price for various defects in package travel tours:

Frankfurter Tabelle (available, e.g., at [http://www.reisemangel.de/frankfurter-tabelle.html](http://www.reisemangel.de/frankfurter-tabelle.html) and [http://www.rechtspraxis.de/frankfurt.htm](http://www.rechtspraxis.de/frankfurt.htm))

**Art. 1 of the German Constitution [Human Dignity]:**

(1) Human dignity is inviolable. To respect and protect it is the duty of all state authority.

(2) The German People therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace, and of justice in the world.

(3) The following basic rights are binding on legislature, executive, and judiciary as directly valid law.

**Art. 2 of the German Constitution [Liberty]:**

(1) Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or morality.

(2) Everyone has the right to life and to physical integrity. The freedom of the person is inviolable. Intrusion on these rights may only be made pursuant to a statute.
UrhG § 12 Right of Publication:

(1) The author has the right to determine whether and how his work shall be published.
(2) The author reserves the right to communicate or describe the content of his work to the public as long as neither the work nor the essential content or a description of the work has been published with his consent.

UrhG § 13 Recognition of authorship:

The author has the right to be identified as the author of the work. He may determine whether the work shall bear a designation of authorship and which designation is to be used.

UrhG § 14 Distortion of the work:

The author has the right to prohibit the distortion or any other derogatory treatment of his work which is capable of prejudicing his legitimate intellectual or personal interests in the work.

UrhG § 97 Right to require cessation of infringement and to damages:

(1) Any person who infringes copyright or any other right protected under this Act may be required by the injured party to eliminate the infringement or, where there is a risk of repeated infringement, may be required by the injured party to cease and desist. Entitlement to prohibit the infringer from future infringement shall also exist where the risk of infringement exists for the first time.
(2) Any person who intentionally or negligently performs such an act shall be obliged to pay the injured party damages for the prejudice suffered as a result of the infringement. When setting the damages any profit obtained by the infringer as a result of the infringement of the right may also be taken into account. Entitlement to damages may also be assessed on the basis of the amount the infringer would have had to pay in equitable remuneration if the infringer had requested authorization to use the right infringed. Authors, writers of scientific editions (Article 70), photographers (Article 72) and performers (Article 73) may also demand monetary compensation for damage which is non-pecuniary in nature provided and to the extent that this is equitable.
VVG § 178 Insurer’s liability:

(1) In the case of accident insurance, the insurer shall be liable following an accident involving the insured person or an event contractually deemed equivalent to an accident.

(2) An accident shall be deemed to have occurred where the insured person involuntarily suffers a health impairment on account of a sudden event having an external impact on his body. Involuntariness shall be assumed until such time as the opposite is proven.

VVG § 180 Invalidity:

The insurer shall owe the promised payments to the agreed extent in the case of invalidity if the insured person’s physical or mental capacity is permanently impaired on account of the accident. Such an impairment shall be deemed permanent if it is expected to last for more than three years and no change in the situation is to be expected.

VVG § 188 Re-assessment of invalidity:

(1) Where the payment of benefits has been agreed in the event of invalidity, each contracting party shall be entitled to have the degree of invalidity re-assessed annually, no more than three years after the accident occurred at the latest. In the case of child accident insurance, the time limit within which a re-assessment may be requested may be extended.

(2) Once the insurer declares that he is liable, the policyholder must be instructed about his right to have the degree of invalidity re-assessed. If such instruction is not given, the insurer may not refer to any delay in the policyholder’s request to have the degree of invalidity re-assessed.

VVG § 189 Drawing on an expert, costs of ascertaining the loss:

Section 84 and section 85 (1) and (3) shall apply mutatis mutandis.

StGB § 263:

(1) Whosoever with the intent of obtaining for himself or a third person an unlawful material benefit damages the property of another by causing or maintaining an error by pretending false facts or by distorting or suppressing true facts shall be liable to imprisonment not exceeding five years or a fine. […]
Holland

Article 74 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:74 CC):

1. Every imperfection in the compliance with an obligation is a non-performance of the debtor and makes him liable for the damage which the creditor suffers as a result, unless the non-performance is not attributable to the debtor.
2. As far as it is not yet permanently impossible to accomplish the indebted performance, paragraph 1 of this Article only applies with due observance of what is regulated in Subsection 2 for a debtor who is in default.

Article 92 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:92 CC):

1. The creditor cannot demand performance of both the contractual penalty clause and the obligation to which this penalty clause is linked.
2. What is indebted on the basis of a contractual penalty clause will replace (take the place of) the compensation for damages that would have been due by virtue of law (statutory provisions).
3. The creditor cannot demand performance of the contractual penalty clause when the non-performance of the obligation to which that clause is linked is not attributable to the debtor.

Article 94 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:94 CC):

1. The court may, upon the request of the debtor, reduce the contractual penalty if this is obviously required by standards of reasonableness and fairness, on the understanding that it cannot grant the creditor less than the applying compensation for damages that would have been due by virtue of law (statutory provisions).
2. The court may, upon the request of the creditor, grant a compensation for additional damages in addition to a contractual penalty which has replaced the compensation for damages that would have been due by virtue of law (statutory provisions), if this is obviously required by standards of reasonableness and fairness.
3. Every contractual provision in derogation from paragraph 1 is null and void.
Article 106 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:106 CC):

1. The victim is entitled to compensation for immaterial damage assessed by standards of reasonableness:
   a. if the liable person had the intention to inflict such harm, or
   b. if the victim has sustained physical injuries or if his honour or reputation has been violated or if he is otherwise harmed as a person, or
   c. if the damage consists of harm to the memory of a deceased person and is inflicted on the spouse if not
      d. legally separated, the registered partner or a blood relative up until the second degree of the deceased,
   e. provided that the memory of the deceased is harmed in such a way that the deceased himself, if he was
      f. still alive, could have claimed compensation for injury to his honour or reputation.

2. The right to compensation under section 1 cannot be transferred or seized, unless agreed upon by contract or unless the primary victim has already started legal proceedings to claim for damages prior to the transfer. If based on inheritance this right to compensation for immaterial damages may also take place if the deceased has notified the defendant of the claim.

Article 107 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:107 CC):

1. If someone has sustained physical or mental injuries as a result of an event for which another person is liable, then this other person must compensate not only the damage of the injured person, but also the costs which a third party has made on behalf of the injured person, insofar as the injured person, if he had made these costs himself, could have recovered them from the liable person. The previous sentence does not affect costs which are made by virtue of an insurance.

2. A person who is held liable under the previous paragraph by a third party for damages may invoke the same defenses against this third party as he may invoke or could have invoked against the injured person himself.
Article 108 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:108 CC):

1. If someone has died as a result of an event for which another person is liable to him, then this other person is obliged to compensate the damage suffered due to the loss of the deceased’s prospective income:
   a. by the not legally separated spouse, the registered partner and the children under age of the deceased, to at least the amount that would be indebted to them under law as maintenance;
   b. by other blood and legal relatives of the deceased, provided that the deceased at the moment on which he died, supported them financially in the costs of living, either voluntarily or by virtue of a judicial decision;
   c. by persons who, prior to the event that has caused the liability, lived together with the deceased in a family relation and for whose maintenance the deceased provided entirely or for a large part, as far as it is plausible that he would have continued to do so if he would not have died, but only as far as these persons reasonably cannot provide for their own maintenance;
   d. by a person who cohabited with the deceased in a family relation and in whose maintenance the deceased contributed by means of actually attending (running) the common household, as far as he suffers damage because he has to find another way to run the house after the deceased has died.

2. Moreover, the liable person is obliged to compensate the costs of the funeral and of the disposal of the dead, and this towards the person at whose account these costs are made, but only as far as these costs are in conformity with the standard of living of the deceased and with other relevant circumstances.

3. The person who is held liable for damages under the previous may invoke the same defences against the persons who are entitled to claim such compensatory damages as he could have invoked against the deceased himself.

Article 233 of Book 6 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 6:233 CC):

A stipulation from the applicable standard terms and conditions is voidable:

a. if it is unreasonably burdensome for the counterparty, having regard to the nature and content of the contract, the way in which these standard terms and conditions have been formed, the interests of each party, as evident to the other, and the other circumstances of the case;
b. if the user has not given his counterparty a reasonable opportunity to take knowledge of the content of the applicable standard terms and conditions.

**Article 208 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:208 CC):**

Without prejudice to the rights and legal remedies of the lessee in the event of a non-performance of the obligation meant in Article 7:206, the lessor is obliged to compensate the damage caused by the defect, if the defect has arisen after the conclusion of the lease agreement and is attributable to him, as well as if the defect already existed at the conclusion of the lease agreement and the lessor was aware or ought to have been aware of its existence or the lessor had made clear, at that time, that the leased property did not have this defect.

**Article 210 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:210 CC):**

1. If a defect makes it entirely impossible to enjoy the leased property in conformity with the lease agreement, but from Article 7:206 it follows that the lessor is not obliged to remedy this defect, then both, the lessee and the lessor, may rescind the lease agreement on the basis of Article 6:267 of the Civil Code.
2. The damage caused by the fact that the lease agreement has ended in consequence of paragraph 1, may be recovered by virtue of a debt-claim for damages caused by a defect.

**Article 500 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:500 CC):**

1. In the present Title (Title 7.7.7A) and the provisions based on it:
   a. a ‘tour operator’ means the person who, in the course of his business, offers in his own name pre-arranged package tours to the public or to a group of persons;
   b. a ‘travel agreement’ means the agreement under which a tour operator engages himself towards his counterparty to provide this counterparty a pre-arranged package tour which includes an overnight stay or which covers a period of more than 24 hours and which includes as well at least two of the following services:
      1. transport;
      2. accommodation;
3. other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the offered package tour.

c. a ‘traveller’ means:
   1. the counterparty of the tour operator to the travel agreement;
   2. the person on whose behalf the tour has been stipulated and who has accepted this stipulation, or;
   3. the person to whom the legal relationship with the tour operator has been transferred in accordance with Article 7:506.

2. The persons who operate in the course of their business as an intermediary or agent of a tour operator who is not established in the Netherlands, may be regarded by their counterparties as the tour operator in the sense of the present Title (Title 7.7.7A).

Article 507 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:507 CC):

1. The tour operator is obliged to perform the travel agreement in accordance with the expectations which the traveler reasonably could have obtained on the basis of the travel agreement.

2. If the tour does not proceed in accordance with the expectations which the traveler reasonably could have obtained on the basis of the travel agreement, then the tour operator is liable for damages, unless the failure in the performance is not attributable to him nor to the person whose assistance he uses in the performance of the agreement, because:

   a. the failure in the performance of the travel agreement is attributable to the traveler;
   b. an unforeseeable or unavoidable failure in the performance is attributable to a third person who is unconnected with the provision of the services contracted for; or
   c. the failure in the performance of the travel agreement is due to a case of force majeure as defined in Article 7:504, paragraph 3, under point (b), or to an event which the tour operator or the person whose assistance he uses in the performance of the travel agreement, even with all due care, could not foresee or forestall.

3. In proportion to the circumstances, the tour operator shall be required to give prompt assistance and support to a traveller if the tour does not proceed in conformity with the expectations which the traveller reasonably could have obtained on the basis of the travel
agreement. If the cause of this non-conformity is attributable to the traveller, the tour operator only has to give assistance and support insofar as this reasonably can be expected of him. In that case, the costs for assistance and support are for account of the traveller. The costs for assistance and support are for account of the tour operator if the failure in the performance of the travel agreement is attributable, in the meaning of paragraph 2, to him or to a person whose assistance he uses in the performance of the travel agreement.

Article 510 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:510 CC):

A failure in the performance of the travel agreement that is attributable to the tour operator, obliges him as well to compensate other damage than material loss as far as this failure has caused a loss of enjoyment of the tour.

Article 611 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:611 CC):

The employer and the employee must behave as befits a reasonable and fair employer and a reasonable and fair employee.

Article 658 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:658 CC):

1. The employer must arrange and maintain the spaces, rooms, machines and tools in which or with which work is performed under his responsibility and give instructions and take safety measures as is reasonably necessary to prevent that the employee suffers damage during the performance of his work.

2. The employer is towards the employee liable for damage which the employee has suffered from activities performed in the course of his work, unless he shows that he has complied with the obligations mentioned in paragraph 1 or that the damage to a substantial degree results from an intentional act or omission or from willful recklessness on the part of the employee.

3. It is not possible to derogate to the disadvantage of the employee from paragraphs 1 and 2 and from the statutory provisions of Title 6.3 of the Civil Code with regard to the liability of an employer.

4. A person who in the course of his professional practice or business enables other persons, with whom he has not concluded an
employment agreement, to perform work, is liable towards these other persons in accordance with the previous paragraphs of the present Article for damage which these other persons have suffered from activities performed in the course of that work. The Subdistrict Court has jurisdiction to give a judgment on legal claims as referred to in the first sentence of this paragraph.

Article 680 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:680 CC):

1. The fixed compensation for damages meant in Article 7:677, paragraph 4, equals the amount in money of the wages to which the employee would have been entitled for the time during which the employment agreement would have remained effective if there had been a regular termination.

2. When the employee’s wages are, either entirely or partially, not fixed for a specific period of time, the standard of Article 7:618 will apply in determining the amount of the wages.

3. Each contractual provision making the employee entitled to a fixed compensation for damages to a lower amount than to which he is entitled pursuant to the present Article is null and void.

4. By written agreement the entitlement of the employee to a fixed compensation for damages may be set at a higher amount.

5. The court is authorized to adjust the fixed compensation for damages to a lower amount if it thinks it is excessive in view of the circumstances of the case, yet not to a lower amount than the wages of the employee fixed in money over the term of notice to be observed by the employer as referred to in Article 7:672, and never to a lower amount than the employee’s wages fixed in money for a period of three months.

6. Where the fixed compensation for damages for which the employee is liable exceeds the amount of his wages fixed in money for a period of one month or where the fixed compensation for which the employer is liable exceeds the amount of the employee’s wages fixed in money for a period of three months, the court may allow the fixed compensation to be paid in periods to be set by the court.

7. The indebted (due) amount of the fixed compensation for damages is subject to statutory interest, to be calculated as of the day that the employment agreement has ended.
Article 681 of Book 7 of the Civil Code (Burgerlijk Wetboek; hereafter: Art. 7:681 CC):

1. The court may grant a party a compensation for damages if the other party, whether or not under observance of the relevant statutory provisions for termination, has terminated the employment agreement in an obviously unreasonable manner.

2. A termination of the employment agreement by the employer shall, among others, be considered obviously unreasonable:
   a. when the employment agreement was terminated without notification of reasons or under notification of a pretended or false reason;
   b. when, taking into account the redundancy arrangements made for the employee and his existing possibilities to find another proper job, the consequences of the termination are too serious for him in comparison with the interest of the employer in the termination of the employment agreement;
   c. when the employment agreement was terminated on the ground that the employee was prevented from performing the contracted work because he had been called up as conscript for military service or alternative service as meant in Article 7:670, paragraph 3;
   d. when the employment agreement was terminated contradictory to an applicable number proportion or seniority arrangement relevant to the economic sector or enterprise by virtue of law or usage, unless there are important reasons for this deviation;
   e. when the employment agreement was terminated on the single ground that the employee made an appeal to conscientious objections in order to refuse the performance of the contracted work.

3. A termination of the employment agreement by the employee shall, among others, be considered obviously unreasonable:
   a. when the employment agreement was terminated without notification of reasons or under notification of a pretended or false reason;
   b. when the consequences of the termination are too serious for the employer in comparison with the interest of the employee in the termination of employment agreement.

4. A contractual provision leaving the decision whether the employment agreement has been terminated obviously unreasonable in the meaning the present Article to the discretion of one of the parties is null and void.
United Kingdom
None to translate.

Bulgaria
*Obligations and contracts act (Zakon Za Zadylzheniata I Dogovorite) (‘ZZD’)*

**Article 22:**
Arrangements having a third party as beneficiary may be reached. A third party beneficiary arrangement may not be revoked after the third party has stated to the promisor or to the promisee that it wishes to make use of the said arrangement. The promisee may reserve the right to revoke such an arrangement or to replace the third party.

The promisor may plead against the third party his defenses which arise from the contract, but not defenses arising from other relationships with the promisee.

If the contract from which the third party derives his right is repealed pursuant to an action by the promisee’s creditors, the third party is obliged to give back only what the promisee gave under the contract.

**Art. 52:**
Compensation for non-pecuniary harm shall be determined *ex aequo et bono* by the court.

**Art. 53:**
If the damage is caused by several persons, they shall be liable jointly and severally.

**Art. 81:**
A debtor shall not be liable if the impossibility to perform an obligation is due to a reason for which he cannot be found to be at fault.

The circumstance that the debtor lacks cash for performance of the obligation shall not exempt him from liability.

**Art. 82:**
The damages shall cover the losses suffered and the loss of profit as far as they are a direct and immediate consequence of the non-performance and could have been foreseen upon the arising of the obligation. However, if the debtor has acted in bad faith, he shall be liable for all direct and immediate damages.
Art. 83:
If the non-performance is due to circumstances for which the creditor is responsible, the court may reduce the damages or exempt the debtor from liability.

Art. 89:
In case of a bilateral contract, if the obligation of one of the parties is extinguished due to impossibility of performance, the contract shall be cancelled by operation of law. Where the said impossibility is only partial, the other party may claim a respective reduction of its obligation or cancellation of the contract through the court, if it does not have sufficient interest in seeking partial performance.

Art. 94:
Arrangements which a priori rule out or reduce the debtor’s liability for deliberate actions or gross negligence shall be null and void.

Art. 230:
If not agreed upon otherwise, the lessor is bound to hand over the property in a state which is appropriate to the use it has been leased for. If the property was not delivered in the proper state, the lessee may claim its repair or a proportional reduction in the lease price, or may avoid the contract of lease, as well as claim damages in all cases.

The lessor shall not be liable for the defects of the leased property which were known to the lessee or which he could easily detect if he had been normally attentive upon conclusion of the contract, except if the defects are hazardous to his health or the health of the members of his household.

Art. 231:
Small repairs related to damages which are caused by conventional use, such as dirty walls in the rooms, corrosion of faucets, door locks, blockage of chimneys etc., shall be at the expense of the lessee.

Art. 250:
Under the contract of deposit the depositor delivers a chattel to the depositary, who receives it with the obligation to keep it and return it. The depositary shall not be entitled to compensation unless it is agreed upon.
Art. 268:
If there are reasonable grounds the person ordering the work may renounce the contract, regardless of the fact that the performance has begun, by paying the contractor for the costs incurred, the work done and the profit which he would have obtained from the performance of the work.

Labour Code (Kodeks na truda)

Art. 67:
(1) The employment contract may be concluded:
   1. for an indefinite period;
   2. as an employment contract for a fixed term.
(2) The employment contract shall be considered concluded for an indefinite period, unless expressly agreed otherwise.

Art. 190:
(1) A disciplinary dismissal shall be imposed after:
   1. Reporting to work late or early departure on three occasions, each no less than one hour, within one calendar month;
   2. Absence from work for two consecutive working days;
   3. Systematic violations of the work discipline;
   4. Abuse of employer’s confidence or divulging proprietary information of the employer.
   5. Causing losses to other persons by employees in the trade and services industries by fraud in the price, the weight, the quality of the item or service;
   6. Participation in games of chance through telecommunication means of the enterprise and the costs incurred shall be reimbursed in their full amount;
   7. Other grave violations of the work discipline.
(2) A disciplinary dismissal pursuant to paragraph (1) shall be imposed in compliance with the criteria under Article 189, paragraph (1).

Art. 199:
(1) The employer or the immediate superior may suspend from work temporarily an employee who reports to work in a state preventing him from performing his work responsibilities, or takes alcoholic beverages or other strong intoxicating substances during working hours.
(2) The suspension shall continue until the employee restores his ability to perform his assigned work.

(3) During the time of suspension the employee shall not receive labour remuneration.

Art. 200:

(1) In case of occupational injuries and diseases causing temporary disability, invalidity or death of the employee the employer shall bear financial liability regardless of whether an organ under his authority or another employee shall be at fault for their occurrence.

(2) The employer shall also be liable in cases where the occupational injury has been caused by force majeure during or in connection with the performance of the assigned work, or of any other work performed even without orders which, nevertheless, is in the employer’s interest, as well as during a break spent within the enterprise.

(3) The employer shall be liable for compensation for the difference between the loss, whether material or non-material, caused, including missed benefits, and the social security compensation and/or pension.

(4) The receiving of compensation pursuant to the preceding paragraph by the heirs of an employee who has died as a result of an occupational injury or disease shall not be deemed acceptance of the legacy.

Art. 225:

(1) In case of unlawful dismissal the employee shall be entitled to a compensation by the employer in the amount of his gross labour remuneration for the period of unemployment caused by that dismissal, but not for more than six months.

(2) When during the period pursuant to the preceding paragraph the employee has worked on a lower paid job he shall be entitled to the difference in the remuneration. The same right shall apply to unlawful reassignment of an employee on another lower paid job.

(3) When an unlawfully dismissed employee is reinstated and upon reporting to work to his former position he is prevented from taking that position, the employer and the guilty officials shall be liable jointly and severally to the employee in the amount of his gross labour remuneration from the day of reporting to the day of his actual admission to work.