

University of Macau

Faculty of Law

Master and Postgraduate Program

International Business Law

2011/2012

MMIB/PLIB 003

Contract Law

PROF. FERNANDO DIAS SIMÕES

DR. CARLOS DUQUE SIMÕES

COURSE DESCRIPTION

This course focuses on Contract Law, as regulated in the 1999 Macau Civil Code. The study of Contract Law includes both the general part (including namely a discussion of basic principles of Contract Law, of its process of formation and of its conditions of validity, of civil special guarantees of obligations and of remedies in case of non-performance by the debtor), and as well the special part (mentioning the basic regulation of a large number of civil contracts).

The Macau Civil Code provides a typical civil law approach, inspired by the 1966 Portuguese Civil Code and the 1896 German Civil Code. It is therefore a good introduction to those not familiar with the Civil Law approach to contracts and obligations.

LEGISLATION

In law courses it is necessary to refer constantly to the applicable sources. Therefore, participants should obtain one copy of the Macau Civil Code, approved by DL 39/99/M, of August 3. Participants may choose which language they want to use for the Civil Code: Chinese or Portuguese or English. A partial English translation of the Macau Civil Code is available. Participants who can read Chinese or Portuguese are strongly advised to also have a full version of the Civil Code in Chinese or Portuguese and to compare the text of the law in the different languages.

- Chinese and Portuguese official versions of the Code are available:

in print:

- edition of the Macau Official Printing House
- edition of the Macau Legislative Assembly
- edition published in mainland China

online (see www.imprensa.macao.gov.mo)

A partial English translation of the Macau Civil Code is available at SSRN (last updated 10 May 2010): http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1280595 (note: the version available at SSRN is more updated than that published in JORGE GODINHO, *Macau Business Law and Legal System*, LexisNexis, Hong Kong, 2007, pages 211-235; therefore, please use the SSRN version).

Students should also bring a copy of Law no. 17/92/M, of 28 September (Standard Contract Clauses).

Fernando Dias Simões

Assistant Professor

PART I

OUTLINE

General Introduction

1. Macau and the Civil Law Family
2. Distinction between Public Law and Private Law
3. Distinction between Civil Law and Special Private Law Branches
 - 3.1 Civil Law as Common Private Law
 - 3.2 Special Private Law Branches
 - 3.2.1 Commercial Law
 - 3.2.2 Labour Law

Introduction to the Law of Contracts

4. Definition of a Contract
5. Contracts and other legal relations
 - 5.1 Contracts and Quasi-contracts
 - 5.2 Contracts and Civil Liability
 - 5.3 Contracts and the Law of Property
6. Principles of Contract Law
 - 6.1 Principle of Good Faith
 - 6.2 Principle of Party autonomy: freedom of contract
 - 6.3 Principle of Privity of contract
 - 6.3.1 Exception: contracts in favour of third parties
 - 6.3.2 Exception: contracts for person to be named

Classification of Contracts

7. Classification of Contracts

- 7.1 Preliminary and definitive contracts
- 7.2 Consensual contracts vs. solemn or formal contracts
- 7.3 Consensual contracts vs. real contracts
- 7.4 Synallagmatic and unilateral contracts
- 7.5 Onerous and gratuitous contracts
- 7.6 Commutative and aleatory contracts
- 7.7 Other classifications of contracts

Formation of contract

8. Formation of Contract

- 8.1 General considerations
- 8.2 Declarations of intent
- 8.3 Offer and acceptance

9. Formal requirements

10. Contracts and the Law of Evidence

11. Burden of Proof

12. Representation

13. Pre-contractual liability

Conditions of substantive validity

14. General considerations

15. Conditions of substantive validity

16. Lack of intent and vices of intent

16.1 Mistake

16.2 Fraud

- 16.3 Violence (duress)
- 16.4 Simulation
- 17. Consequences of a lack of substantive validity
 - 17.1 Invalidity: nullity and annulment
 - 17.2 Retroactive effects of invalidity
 - 17.3 Invalidity and the protection of third parties

The contents of a Contract

- 18. Introduction
- 19. Express and implied clauses of a contract
- 20. Exemption clauses and limitation clauses
- 21. Penalty clauses
- 22. Arbitration clauses
- 23. Standard contract clauses
 - 23.1 Introduction
 - 23.2 Regulation
 - 23.3 Preventive action
- 24. Promise to contract
- 25. Conditional contracts
- 26. Interpretation

Transmission of contractual rights and duties

- 27. The assignment of credits
- 28. Sub-rogatio
- 29. The assignment of a singular debt
- 30. The transfer of contractual position

BASIC READING MATERIALS

JORGE GODINHO, *Macau Business Law and Legal System*, LexisNexis, Hong Kong, 2007.

TONG IO CHENG, *Macau* (International Encyclopaedia of Laws, Contracts, suppl. 57, March 2009), Kluwer Law International, 2009.