Preface

A final word has to be said about the Draft Civil Code that has been appended, in an English translation, to the present volume. It is designed to facilitate what Roman lawyers are accustomed to call Textstufenforschung. The German (and Austrian) contributors to the symposium had at their disposal the English translation of a Draft from 2004 that had been kindly made available by the Israeli Ministry of Justice (Draft X). At the symposium, it turned out that the contributors from Israel had based their lectures on a more recent draft from 2006 (Draft Y). For a number of reasons it was impossible to obtain an English translation of Draft Y (which, in turn, may be subject to further change in the course of the legislative process). Eventually, a revised version of Draft X was made available in English translation, by the Israeli Ministry of Justice, to all Germanspeaking contributors (Draft Z). If this latter Draft - the latest one available to non-Hebrew speakers - that has been included in this volume; and all German (and Austrian) contributors have revised their papers accordingly.
In most cases, the Israeli contributors have also supplied their German-speaking counterparts with a translation of the relevant provisions in Draft Y. Thus, in order to make their papers fit both the papers of the Israeli colleagues and the Draft printed as Appendix I, the German (and Austrian) contributors have usually referred to the numbering of provisions according to Draft Z (= old version) and draft Y (= new version). The table of concordance printed as Appendix II also relates to Draft Z and Y. By and large, there are only minor variations between the different versions.

[...]

**Part Three**

**Chapter Three**

99. *What is Agency* - (a) Agency is the power of one person (in this Chapter - the agent) to perform a legal act on behalf of another person (in this Chapter - the principal).

(b) Any legal act can be performed by agency, unless by reason of its essence, its conditions or pursuant to legislation, it must be personally performed.

100. *A Person’s Agent is Like Himself* - A person’s agent is like himself, and the agent's act, knowledge and intent entitles or binds, as the case may be, the principal.

[...]

(c) As long as the agent did not know, and was not required to know of the terminatio of the agency, he is entitled with respect to the principal to regard the agency as continuing to exist.

(d) Where the third party did not know, and was not required to know of the termination of the agency, he is entitled to regard the agency as continuing to exist; if the agent knew or was required to know of its termination, the third party is entitled to chose between regarding the agency as continuing or the alternatives set forth in section 105(b).

[...]

**Part Four: Obligations**

**Sub-Part One: General Provisions Regarding Obligations**

**Chapter One: Completion, Fulfillment and Expiration of Obligations**

[...]

116. *Time for Performance* - (a) An obligation pursuant to a contract must be performed within a reasonable time from its creation; if the obligor was required to perform the obligation within a certain particular period of time, he may set the time for its performance within that period of time.

(b) The obligor will give the obligee notice, a reasonable amount of time in advance, regarding the date that the obligation will be performed as set forth in subsection (a).
117. *Early Fulfillment* - An obligation may be performed before the deadline, providing that such early performance will not prejudice the rights of the obligee and that the obligor gave notice of such early performance a reasonable time in advance.

(2) if the parties were obliged to perform their obligations simultaneously (in this part - integrated obligations) - as long as the obligee is not ready to perform the obligation imposed on him.

119. *Place of Fulfilling the Obligation* — (a) The obligor will perform the obligation at the obligee’s place of business, and if he does not have a place of business or if the obligation is not connected to his business — at his place of residence.

(b) If the obligee changed his place of business or his place of residence after the date on which the obligation was created, the obligee will bear the additional expenses of performing the obligation in the new place.

122. *Fulfillment of the Obligation in Israeli Currency* — Where there is an obligation to make a payment in Israel in a foreign currency and payment in such currency is prohibited by law, the payment shall be made in Israeli currency according to the exchange rate customary in transactions of that nature as it is known at the time of the payment.

128. *Offset* — (a) Monetary debts arising from one transaction that the parties owe to each other and the date for performance has arrived, may be offset against one another with notice of one party to the other party; and this is the rule regarding monetary debts that do not arise from one transaction, if they are debts of a fixed amount.

(b) An obligation whose performance is not subject to attachment may not be offset.

(c) The provisions of sections 124 and 125 will apply, with the necessary changes, to the performance of obligations by way of offset.

130. *Substance of Assignment* - Assignment is the transfer, pursuant to contract, of a right or a liability arising from an obligation, from one person (in this Chapter — the assignor) to another person (in this Chapter - the assignee).

131. *Applicability of the Chapter on Assignment Pursuant to Legislation* - The provisions of this Chapter will also apply, mutatis mutandis, to assignment pursuant to legislation of rights or liabilities arising from an obligation.

132. *Applicability of the Chapter on Pledge on Assignment by Means of Encumbrance* - The provisions of the Chapter on pledges will apply to assignment by means of encumbrance.

133. The Assigned Right - The assignment of a right arising from an obligation may apply to the assignment in its entirety or partially, and this is the case with regard to a conditional right, a future right or a right that is not for a fixed amount.

134. Assignment of Right by Obligee -(a) An obligee may assign his right without the consent of the obligor, unless the transferability of the right has been limited by contract, legislation or due to the nature of the right.
(b) Where part of the right has been assigned, the obligor is entitled to be indemnified or the expenses incurred by him as a result of the splitting of the right.

135. **Completion of Assignment of a Right** - (a) Assignment of a right is completed on the date agreed upon by the assignor and the assignee.

(b) Assignment of a right that has not been created will be completed only after the right has been created.

136. **Assignment of Auxiliary Rights** - The assignment of a right also transfers to the assignee any guarantee that was given in order to insure it as well as any other right auxiliary to the assigned right, on the condition that they are transferable; the assignor will, upon demand by the assignee, perform the acts necessary in order for the transfer to vest with the assignee a right which has the same force as that of the right held by the assignor.

137. **Preservation of Claims of the Debtor Against the Assignee** - (a) The assignment of a right does not change the right or its conditions.

(b) A claim by the debtor against the assignor regarding the right assigned may be asserted by the debtor against the assignee.

(c) A claim of the debtor against the assignor that is not with regard to the right assigned may be asserted by the debtor against the assignee only if the grounds for such claim existed prior to the debtor's knowledge of the assignment.

138. **Defense of the Debtor in Case of the Assignment of a Right** - (2) Where the debtor has fulfilled his obligation toward the assignor before the assignor notified him of the assignment or before the written assignment by the assignor was presented before him, the debtor is excused from his obligation, unless he acted in bad faith.

(b) Where the debtor fulfilled his obligation to the assignee after the assignor notified him of the assignment or after the written assignment by the assignor was presented before him, the debtor is excused from his obligation even if the right has not been transferred to the assignee, unless he acted in bad faith.

139. **Assignment of the Obligation by the Debtor** - A debtor may assign his obligation, in part or in whole, if he has received the consent of the creditor to the assignment, except if the obligation is one whose transferability has been limited by legislation.

140. **Guarantee or Pledge not Given by the Debtor** - Where the obligation was guaranteed by a guarantee or by a pledge that was not given by the debtor, the assignment of the obligation terminates the guarantee or the pledge, unless the guarantor or the owner of the pledged property consented to the assignment.

141. **Preservation of Claims of the Assignee Against the Creditor** - (a) The assignment of an obligation does not change the obligation or its conditions.

(b) The claim of an assignor against the creditor regarding the obligation that was assigned may be asserted by the assignee against the creditor.

[...]

**Chapter Three: Multiple Debtors and Creditors**

[...]

**Article Two: Multiple Debtors**

144. **Presumption of Obligation Jointly and Severally** - Where more than one debtor is liable for the same debt, there is a...
presumption that they are jointly liable.

145. **Demand for Performance from Debtors Liable for One Obligation** — The creditor may demand performance of the obligation, entirely or in part, from all of those obligated for the same debt as one, or from each debtor separately, on the condition that they not fulfill more than the entire obligation.

146. **Vacating or Canceling the Obligation of Debtors** — (a) Where debtors are jointly or jointly and severally liable for an obligation pursuant to a contract, and the obligation of one of them is rescinded or becomes void, the obligation of the others will be voided at the rate of participation that they were entitled to receive from that debtor had his obligation not been rescinded or become void; if the liability of the other debtors was conditioned, pursuant to agreement, the circumstances or the substance of the obligation, on the performance of the obligation that was rescinded or became void — the liability of the others will be canceled.

(b) Notwithstanding the provisions of subsection (a), if some or all of the other debtors knew, or should have known, at the time the contract was entered into, of the grounds for the invalidity or rescission of the liability as set forth in that subsection, the other debtors will be liable for the entire amount of the obligation and will be entitled to the full rights with regard to the creditor; however, if the creditor also knew or should have known, at the time the contract was entered into, of such grounds, the provisions of subsection (a) will apply, and the court may obligate each party to indemnify the opposing party for the harm caused to him as a result of his reliance on the contract.

(c) If the grounds for the rescission or invalidity of the obligation was a defect in the competence or the representation of one of the debtors, there is a presumption that the other debtors knew or should have known of the defect, unless the contract pursuant to which the debt was created was entered into in the course of business of the creditor, and that the creditor did not know and had no obligation to know of it.

147. **Discharge for some of the Debtors** - (a) Where debtors are severally liable and the creditor discharges one of them from his obligation, in whole or in part, this discharge shall not discharge the others, unless such intent may be inferred from the discharge; a discharge of one of the debtors that does not discharge the other debtors derogates from the right of participation of the other debtors with regard to him, only if it was given in the framework of an arrangement in good faith between the creditor and the debtor who was excused.

(b) Where debtors are liable jointly or jointly and severally, and the creditor discharges one of them from his liability, in whole or in part, the other debtors are discharged at the rate of the said discharge, unless another intention may be inferred from the discharge; however, the discharge of one of the debtors that does not entitle the other debtors does not derogate from their right of participation from the debtor who was discharged.

148. **The portion of debtors liable for the same debt** - There is a presumption that where debtors are liable for the same obligation they are liable in equal parts.

149. **Division of Burden Among Debtors** — Where there are more than two debtors and it is not reasonably possible to receive repayment from one of the debtors, the other debtor will be responsible for his part according to their relative liability for the debt.

150. **Right of Participation from Debtor** — A debtor who has fulfilled more than his share in the debt is entitled to participation from the other debtors according to their relative shares in the debt.

151. **Claims of the Debtor who has Paid the Debt** - Where a debtor has fulfilled the debt even though there was a claim that would excuse the debtors from fulfilling it, he is not entitled to participation from the other debtors; however, if the debtor who fulfilled the debt had a personal claim against the creditor that was not available to the other debtors, and if he fulfilled the debt in good faith, this does nothing to derogate from his right to participation.

**Article Three: Multiple Creditors**

152. **Presumption that Creditor Is Alone** - There is a presumption that creditors who are entitled to have one debt fulfilled
(in this Article - co-creditors) are creditors severally.

153. The Share of Co-Creditors in a Debt - Co-creditors are entitled to fulfillment of the debt in equal amounts.

154. Applicability of Chapter on Co-Ownership of Property to Co-Creditors - The provisions of the Chapter dealing with co-ownership of property will apply, subject to the provisions of this Chapter, mutatis mutandis.

155. The right of Co-Creditor to Demand Fulfillment of the Debt - Where co-creditors are creditors severally, each creditor is entitled to demand fulfillment of the debt from the debtor, on the condition that no more than the full debt be fulfilled; where the co-creditors are joint creditors, they are entitled to demand fulfillment only jointly.

156. The Right of the Debtor to Fulfill the Debt - Where co-creditors are creditors severally, the debtor is entitled to fulfill the debt with regard to any of the creditors, according to his choice, as long as a judgment has not been rendered in favor of a particular creditor; if the creditors were joint creditors, the debtor must fulfill the debt only with respect to all the creditors together.

157. The Right of a Creditor to Discharge from a Debt - (a) A creditor is not entitled to discharge the debtor from the debt without receiving the consent of the other co-creditors.

(b) There is nothing in the provisions of subsection (a) to derogate from the right of a creditor to discharge the debtor from that creditor’s relative share in the debt; the discharge of the relative share in the debt will be applicable to that share with respect to the relationship between the rest of the co-creditors and the debtor.

158. Conditioning Right of Partner Creditor on Act - Where the right of the partner creditors is conditioned upon their performance of an act, the performance of the act by one of them will obligate and entitle the other creditors.

159. Revocation of Contract for Breach by Co-Creditor - Where a contract is breached by a debtor, each one of the co-creditors pursuant to the contract is entitled to avail himself of the right to revoke the entire contract pursuant to the provisions of the sub-part dealing with remedies for the breach of an obligation.

160. Personal Claim Against One of the Creditors - (a) The personal claim of a debtor against one of the co-creditors does not derogate from the right of the other creditors to demand fulfillment of the debt.

(b) The personal claim of a debtor against one of the co-creditors as set forth in subsection (a) does not derogate from the right of that creditor to participation, pursuant to the provisions of section 162, from the creditors regarding whom the debt has been fulfilled.

161. Claim of Set-Off Of a Debtor Against a Creditor Partner - (a) A debtor is entitled to fulfill his debt as set forth in section 156, through means of a set-off as against a debt that the debtor is entitled to from one or more of the creditors.

(b) If the debt is fulfilled by means of a set-off, the remainder of the co-creditors are entitled to participation from the creditor against whom the set-off was performed, pursuant to the provisions of this Chapter.

162. Participation from the Co-Creditor - (a) Where the debt has been fulfilled with regard to a creditor in an amount greater than his share in the debt, the remainder of the creditors are entitled to participation from him at the rate of their share in the debt.

(b) A creditor who is bound to participate regarding others holds what he received in trust for such creditors.

Sub-Part Two: Special Provisions for Contracts

163. Good Faith in Negotiations - (a) Contract negotiations must be carried out in good faith.
(b) One who breaches the obligation of good faith set forth in subsection (a) will compensate the other party for the damage caused to him as a result of the negotiations or making of the contract.

**Chapter Two: Making of Contract**

164. *Mode of Making Contract* - A contract is made by way of offer and acceptance in accordance with the provisions of this Chapter.

165. *Offer to Enter into Contract* - A person’s proposal to another person constitutes an offer, if it attests to the offeror’s resolve to enter into a contract with the offeree and is sufficiently particular so as to enable the contract to be concluded by acceptance of the offer. A proposal includes a proposal to the public.

[...]

166. *Lapse of Offer* - The offeror’s offer lapses when either one of the following occurs:

(1) The offeree has rejected it;

(2) The deadline for its acceptance has passed;

(3) The offeror or the offeree has died or has been declared to be of limited legal capacity or a receivership order has been given against him, or if it is a corporation - it has decided upon voluntary dissolution or a dissolution order has been given against him, on the condition that a notice of acceptance has not been given. However, the offer will not lapse according to this paragraph if the offeror is not permitted to withdraw his offer as set forth in section 166(b).

167. *Acceptance* — Acceptance shall be by notice by the offeree delivered to the offeror, attesting to the offeree’s resolve to enter into the contract with the offeror in accordance with the offer.

[...]

172. *Late Acceptance or Acceptance with Variations* — Acceptance of an offer after it has lapsed, or acceptance that includes an addition, a limitation or some other variation of the offer will be considered a new offer.

[...]

**Chapter Three: Rescission of Contract and Defective Contracts**

**Article One: Void Contracts**

174. *Invalid Contract* - (a) A contract the making, contents or goal of which is illegal or contrary to public policy is void.

[...]

177. *Rescission of Contract Due to Mistake* - (a) Where a person has entered into a contract due to a mistake and it is reasonable to assume that but for the mistake he would not have entered into it, and the other party knew or should have known this, that person may rescind the contract. If the other party did not know and need not have known of the mistake, the Court may, upon application of the mistaken party, rescind the contract for special cause, and it may require the mistaken party to compensate the other party for the damage caused to him in consequence of making the contract.
(b) Notwithstanding the provisions of subsection (a), mistake is not a ground for rescission of the contract if the contract can be carried out by correcting the mistake and prior to the rescission of the contract the other party notified the mistaken party that he is prepared to carry out the contract after such correction.

178. Rescission of Contract Due to Deceit - Where a person has entered into a contract in consequence of a mistake resulting from deceit practiced on him by the other party or by another person acting on behalf of the other party, he may rescind the contract.

[...]

182. Severing of Contract - Where a contract is severable and the ground for the invalidity or the rescission relates only to one part thereof, that part alone shall be void or voidable. However, if it is reasonable to assume that a party to the contract would not have entered into the contract but for that part, the entire contract is void or voidable, as the case may be, and the party entitled to rescind may choose to rescind only the part to which the ground for rescission relates, in place of rescission of the entire contract.

[...]

Chapter Five: Form and Contents of Contract

186. Contents of Contract - The contents of a contract may be whatever is agreed upon by the parties.

187. Interpretation of Contract - (a) A contract shall be interpreted in accordance with the intention of the parties as it may be inferred from the contract and the circumstances.

(b) Where a contract is subject to various interpretations, an interpretation upholding its validity is preferable to an interpretation according to which it is void.

(c) Expressions and stipulations in a contract that are customarily used in contracts of that kind shall be interpreted in accordance with the accepted meaning in such contracts.

(d) Where a contract that is subject to various interpretations, and one party to the contract had greater control in drafting the stipulations of the contract, a interpretation that is detrimental to him is preferable to an interpretation that is beneficial to him.

(e) Sections 2, 4 through 8 and 10 of the Interpretation Law, 5741-1981 and Section 257 of the Evidence Ordinance [new version], 573-1971 will apply \textit{mutatis mutandis} to the interpretation of a contract unless this is inconsistent with the context.

[...]

192. Mutuality of Obligations - (a) Where the time for the performance of the obligation of one party to a contract is later than the time for the performance of the main obligation of the other party, the performance of the obligation shall be contingent upon the performance of the obligation of the other party.

(b) Where there is a reasonable apprehension that a party will not perform a main obligation and the time for performance has not yet arrived, the other party to the contract may demand delivery of a reasonable guarantee for the performance and he is entitled to delay the performance of his obligation until delivery of the guarantee.
193. **Conditional Contract** - (a) Parties may agree that the validity of the contract shall be dependent upon the fulfillment of a condition (in this Chapter - suspensory condition), or that the contract will cease upon the fulfillment of a condition (in this Chapter - resolutory condition).

(b) Where a contract is contingent upon the agreement of a third party or a permit pursuant to legislation, there is a presumption that the receipt of such agreement or permit is a suspensory condition to the contract.

(c) A party to a contract contingent upon a suspensory condition is entitled to remedies to prevent its breach even before fulfillment of the suspensory condition.

(d) Where a suspensory or resolutory condition was not fulfilled within the period fixed therefore, or where no period has been fixed, within a reasonable period of time after making the contract, the following provisions shall apply-

1. In the case of a suspensory condition - the contract is void;
2. In the case of a resolutory condition - the condition is void.

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**Chapter Six: Frustration of Contract**

195. **Definitions for the Chapter on Frustration** - In this Chapter-

“A new circumstance” - a factual or legal circumstance that happened after the contract was entered into;

“A frustrating event” - any of the following:

1. The occurrence of a new circumstance that makes the performance of the obligation of a party to the contract impossible, illegal, or fundamentally different from what was agreed upon by the parties;

2. The occurrence of a new circumstance that renders the realization of the purpose of entering into the contract impossible;

“A suspending event” - a frustrating event that occurs temporarily.

197. **Lapse due to a Frustrating Event** — Where a contract has lapsed pursuant to the provisions of section 196(a), the obligations pursuant to such contract shall lapse and the Court may order each party to compensate the other party for reasonable expenses that he incurred or reasonable obligations that he undertook in order to fulfill the contract.

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**Sub-Part Three: Special Contracts**

**Chapter One: Sales Contract**

**Article One: General Provisions**

[...]

212. **Place of Fulfilling the Obligation of Delivery** - (a) Delivery of the property shall occur in the place of business of the
seller, and if he has no place of business, at his place of residence.

(b) Where it is agreed upon that the seller will take care of transporting the property, delivery shall take occur at the place agreed upon with the seller.

[...]

222. Buyer’s Reliance on Discrepancy - (a) The buyer is not entitled to rely on the property’s discrepancy -

(1) If he did not notify the seller of it within a reasonable time after he discovered it or he should have discovered it, with a reasonable description of the discrepancy. This provision will not apply to a discrepancy which the seller knew or should have known of.

(2) If he did not give the seller a reasonable opportunity to examine the property.

(b) Notwithstanding the provisions of subsection (a), the buyer is entitled to rely on the discrepancy if, and to the same extent that, the non-fulfillment of the duties enumerated there did not result in any injury to the seller.

[...]

Chapter Six: Borrowing Contract

306. Substance of Borrowing Contract — A borrowing contract is a contract between a lender and a borrower for the transfer, without compensation, of the right to possess and to use the property temporarily.

307. Applicability of Provisions on the Chapter on Borrowing — Sections 285 through 289, 294, 295, 300, 302 and 303 will also apply, mutatis mutandis, to borrowing.

308. Termination of Borrowing Contract — The lender may terminate the borrowing contract by notice to the borrower within a reasonable time in advance, even after the borrowed item has been delivered to the borrower, where one of the following exists —

(1) One of the conditions set forth in section 235(a);

(2) The borrower has died, or an order of liquidation or receivership in bankruptcy proceedings has been given against him, or he has been declared bankrupt;

(3) The borrowed item is needed by the lender due to circumstances that did not exist when the borrowing contract was entered into,

309. Discrepancy of Borrowed Item — Sections 296 through 299 will apply, mutatis mutandis, to the discrepancy of a borrowed item, however, the lender will not bear liability due to such discrepancy unless the discrepancy was caused by his negligence.
418. Definitions for Standard Contracts Chapter - In this Chapter-

“the Tribunal” - the Standard Contracts Tribunal as defined in the Standard Contracts Law (Standard Contracts Court)

“standard contract” - version of contract some or all of whose conditions are set forth in advance by one of the parties for its use in many contracts between it and people of unspecified identity or number;

“customer” - one to whom a provider proposes a contractual arrangement between them pursuant to a standard contract, regardless of whether he is receiving or providing something;

“condition” - condition in a standard contract, including a condition referred to in it as well as any other condition that constitutes part of the contractual relationship, except a condition upon which the supplier and the customer specifically agreed for the purpose of a particular contract.

419. Unfair Condition and its invalidation - The court or the Standard Contracts Tribunal may invalidate or change, in accordance with the provisions of this Chapter and after it has examined the entirety of the conditions of the contract and the circumstances of the matter, the condition in a standard contract that infringes upon the rights of customers, or gives an unfair advantage to the supplier that is liable to lead to an infringement of the rights of the customer (in this Chapter - an unfair condition).

420. Presumption of Unfair Condition - There is a presumption that each of the following conditions is an unfair condition -

(1) a condition that discharges the supplier, fully or partially, from liability that would be imposed upon him pursuant to legislation in the absence of such condition of a condition that unreasonably limits the liability that would be imposed on the supplier were it not for such condition;

(2) a condition that gives the supplier an unreasonable right to rescind the contract or to suspend or postpone the performance of the contract, or to change the material obligations of the contract;

(3) a condition that gives the supplier the right to transfer his responsibility to a third party;

(4) a condition that gives the supplier the right to establish or to change a price or other material obligations imposed on the customer, unless the change is due to circumstances that are not in the control of the supplier;

(5) a condition that unreasonably obligates the customer, to resort to the supplier or another person, or that restricts in another manner the customer’s freedom to contract or not to contract with another person;

(6) a condition that abrogates or restricts a right or a remedy available to the customer according to law, or a condition that unreasonably restricts a right or remedy available to the customer under the contract, or a condition that makes such a right or remedy contingent upon an unreasonable requirement or on giving notice within an unreasonable period of time or in an unreasonable manner;

(7) a condition that imposes the burden of proof on the customer where such burden would not have been imposed upon him were it not for such condition;

(8) a condition that abrogates or restricts the customer's right to raise certain claims before the courts, with the exception of a reasonable arbitration agreement;

(9) a provision that conditions upon a legal provision regarding the judicial forum or a condition that gives the supplier an exclusive right to choose the judicial or
arbitration forum in which the dispute will be clarified;

(10) a condition that sets forth that a dispute will be dealt with in arbitration, where the supplier has a better opportunity than the customer to influence the conditions of the arbitration; in this clause, “conditions of the arbitration” include the ruling of the arbitrators, the place of arbitration, the conditions of arbitration, the manner of conducting the arbitration and the procedural rules of the arbitration. [...]
caused him due to the breach and its consequences.

[...]

## Article Two: Additional Provisions Regarding Compensation

535. *Mitigation of Damages* - (a) The breaching party is not obligated to pay compensation for damage that the injured party could have prevented or mitigated with reasonable efforts.

(b) Where the injured party incurred reasonable expenses to prevent or mitigate the damage or undertook reasonable obligations for this purpose, the breaching party must indemnify him for them, regardless of whether or not the damage was prevented or mitigated; if the expenses or obligations were unreasonable, the breaching party is obligated to indemnify him for the reasonable amount under the circumstances.

(c) The provisions of this section will not apply to augmented compensation, compensation without need to prove damages and agreed upon compensation as set forth in Article Four of this chapter.

[...]

## Article Seven: Compensation for Property Damage

[...]

568. *Agreed Upon Compensation* - (a) Where the contract sets forth the amount of compensation for a breach, the injured party is entitled to the compensation set forth, without proof of damages (in this article - agreed upon compensation).

(b) Amounts paid by the breaching party to the injured party prior to the breach will be considered agreed upon compensation, provided that the parties agreed at the outset that if the contract is breached such amounts will be forfeited to the benefit of the injured party.

569. *Exception to Agreed Upon Compensation* - (a) The court may reduce the amount of agreed upon compensation if it was set without any reasonable regard to the damage that could have been foreseen as a reasonable result of the breach at the time the contract was made.

(b) Where the contract provides for agreed upon compensation, such provision does not, in and of itself, derogate from the injured party’s right to claim compensation pursuant to other provisions of this chapter, or any other remedy for the breach in place of such agreed upon compensation.

[...]
Chapter Six: Remedies for Anticipated Breach

572. **Right to Remedies for Anticipatory Breach** - Where an obligated party indicates his intention not to perform his obligation or where it is clear from the circumstances that it is nearly certain that there will be a breach, the injured party shall be entitled to all of the remedies set forth in this subpart, *mutatis mutandis*; however, an order for enforcement of the obligation shall not be made that instructs that the obligation be performed at a date earlier than the date agreed upon for performance.

1 Chapter Three of Sub-Part Two of Part Five (sections 628 through 668). A proposal for a new version of the Pledges Law is integrated into the Explanatory Notes.
2 Chapter Four in Sub-Part One of Part Five (sections 589 through 611).
3 Sub-Part Six in this Part (Part Four) (Sections 520 through 575).
4 Sefer Ha-Hukim 5741, p. 302.
5 Dinei Medinat Yisrael [Nusach Chadash] 18, 421.
6 Here there will be a reference to a law that is outside of the proposed law in which provisions regarding the Standard Contracts Tribunal will appear (see also section 850).

**Referring Principles:**

- I.1.1 - Good faith and fair dealing in international trade
- II.1 - Prerequisites and effects of agency
- II.4 - Agency by estoppel / apparent authority
- III.1 - Set-off
- III.2 - Assignment of claim
- IV.2.1 - Contractual consent
- IV.2.4 - Lapse of an offer
- IV.3.1 - Scope of application; definition
- IV.3.5 - Unfair standard terms
- IV.5.1 - Intentions of the parties
- IV.5.3 - Interpretation in favor of effectiveness of contract
- IV.5.4 - Interpretation against the party that supplied the term
- IV.5.2 - Context-oriented interpretation
- IV.6.2 - Subsequent fixing of contract price
- IV.6.11 - Plurality of debtors
- IV.6.12 - Plurality of creditors
- IV.7.1 - Invalidity of contract that violates good morals ("<em>boni mores</em>"
- IV.7.3 - Right to avoid the contract for mistake in fact or law
- IV.7.4 - Right to avoid the contract for fraudulent misrepresentation
- IV.7.5 - Severability of contract provisions
- V.1.1 - Place of performance
- V.1.2 - Time of performance
- V.1.3 - Early performance
V.1.4 - Principle of simultaneous performance; right to withhold performance
VI.1 - Termination of contract in case of fundamental non-performance
VI.2 - Deadline for notice of defects
VI.4 - Promise to pay in case of non-performance
VI.5 - Anticipatory breach
VII.1 - Damages in case of non-performance
VII.2 - Principle of foreseeability of loss
VII.4 - Duty to mitigate
VIII.1 - Definition
VIII.2 - Legal consequences
V.2.1 - Payment in currency of place of payment