

# TABLE OF CONTENTS

<b>Preface to What is Private Law? .....</b>	»	1
<i>Antonio Lordi</i>		
<b>Preface to the Original.....</b>	»	5
<i>Guido Alpa</i>		
<b>CHAPTER I</b>		
<b>One Question, Many Answers.....</b>	»	9
1. In Search of the Meanings of “Private Law” .....	»	9
2. From the Past to the Present .....	»	10
3. Private Law Today .....	»	12
<b>CHAPTER II</b>		
<b>“Private Law” in a multidisciplinary perspective.....</b>	»	15
1. The many meanings of “private law” .....	»	15
2. The boundaries of private law.....	»	17
3. Private Law Theory .....	»	18
4. The current meaning of ‘private law’ .....	»	20
<b>CHAPTER III</b>		
<b>Private Law and Social Needs.....</b>	»	23
1. Normative Polycentrism and Social Control.....	»	23
2. European Community Law .....	»	24
a. Critical Interpretation.....	»	25
b. Juridical and Economic Integration .....	»	26
c. The Functional Interpretation .....	»	28
d. The Jurisprudential Interpretation.....	»	29
3. The Civil System and Private Regional Law.....	»	30
4. Measures of the Independent Administrative Authorities and Moral Suasion .....	»	32
5. Deontological Codes .....	»	33
6. Effects of Normative Polycentrism.....	»	35
7. Private Law as a Branch of “Variable Geometry” Law .....	»	36

**CHAPTER IV**

<b>The Italian Civil Code (1942) after the fall of Fascism.....</b>	37
1. The debate on recodification.....	37
2. The arrangement of the new civil law. From the formal method to the historical-comparative-case method.....	38
3. Commentaries on the Civil Code.....	40
4. The 1960s .....	41
5. The new manuals .....	42
6. The “seasons” of civil law doctrine .....	43

**CHAPTER V**

<b>The Beginning and the End of Human Life.....</b>	45
1. Legislation, Representative Cases, Difficult Solutions .....	45
2. Legislative Solutions: The Case of the Embryo.....	45
3. Current Italian Regulations.....	46
4. An Open Problem: Self-determination and Advance Directives on Medical Treatment – The Biological Will.....	48
5. Uncertainties Facilitate the End of Life .....	49
6. Who Should Decide? .....	51
7. The Living Will .....	52

**CHAPTER VI**

<b>Individual and Social Community.....</b>	55
1. Basic Rights in the Community System .....	55
2. Fundamental Rights as the New Founding Principles of the European Union .....	58
3. The Notion of Person in the Civil Codes: The “Subject of Rights” ..	58
4. Identities .....	60
5. Differences .....	61
6. The “Virtual” Person and Personal Data.....	62
7. The Family at the Present Time .....	64
8. The <i>De Facto</i> Family .....	66
9. Family Unions .....	69

**CHAPTER VII**

<b>Tradition Revisited: Ownership .....</b>	71
1. Introduction .....	71
2. Ownership as a Polyhedral Concept .....	71
3. Ownership and Ownerships.....	73
4. <i>Excursus Storico</i> .....	73

a. Dominium Directum and Dominium Utile .....	74
b. <i>The Modern Conception of Ownership: The Code Civil (1804)</i> .....	74
c. <i>The Unitary Conception of Ownership</i> .....	75
d. <i>Ownership and Ownerships</i> .....	75
e. <i>The Prevalence of Special Legislation</i> .....	76
 <b>CHAPTER VIII</b>	
<b>Tradition Revisited: Contract</b> .....	77
1. The Contract in Today's Society: The Factors of the Evolution of Contract Law .....	77
2. Judicial Control and the Rules of Jurisprudence.....	77
3. International Conventions and Praxes.....	78
4. The Significance of Sources of Hetero-regulation .....	78
5. New Praxes for Concluding the Contract.....	79
6. New Technologies .....	79
7. Beyond the Dogmas.....	79
8. The “Europeanization” of the Contract.....	81
9. Community Initiatives to Harmonize and Standardize Contract Law.....	81
10. The Harmonization of Contract Law .....	83
 <b>CHAPTER IX</b>	
<b>Tradition Revisited: Tort</b> .....	85
1. Civil Liability, Unlawful Act, Damages.....	85
2. The Traditional Model: “No Liability without Negligence”, “No Liability without Infringement of an Absolute Subjective Right” .....	86
3. Aspects of civil liability in the European context .....	87
3.1. Methodological premises.....	87
3.2. Protection of the individual in his physical dimension .....	88
3.3. Protection of the person in its virtual dimension .....	89
3.4. Environmental protection .....	90
3.5. Protecting the economic interests of investors .....	90
3.6. Protection of competition and damages for breach of market rules.....	91
3.7. Plans to unify the rules on civil liability .....	97
 <b>CHAPTER X</b>	
<b>Traditional Remedies</b> .....	99
1. Rights, fundamental freedoms and regulation of the contract.....	99
2. Fundamental rights as “general principles” .....	100

3. Fundamental rights as general principles of contract law in the case law of the Court of Justice. The role of fundamental freedoms .....	» 103
4. Human rights in the European Convention .....	» 107
5. The dilemma of the modern legislator .....	» 108
6. The contribution of the analysis of comparative experience. Ger- many, Holland and Israel .....	» 110

**CHAPTER XI**

<b>The Market .....</b>	<b>» 117</b>
1. The Market and Its Rules.....	» 117
2. The Globalization of Economic Relations .....	» 118
3. Free Market and Competition .....	» 120
4. Community Law of Competition .....	» 121
5. Business Contracts, Rules and Normative Uses.....	» 122
6. From Classifications and General Categories to the Identification of Regulatory Techniques .....	» 124

**CHAPTER XII**

<b>Difficult Cases.....</b>	<b>» 127</b>
1. Introduction .....	» 127
2. The Civil System .....	» 127
3. State Liability for the Infringement of Community Law .....	» 129
4. The Notion of Consumer .....	» 130
5. Damage from Birth.....	» 131
6. Damage from Futile Medical Care .....	» 134
7. Same-sex Marriage .....	» 135
8. Acquisitive Occupation.....	» 136
9. Anatocism.....	» 138
10. The “Parmalat Case”.....	» 141
11. Harm Caused by Smoking .....	» 146
<b>Conclusions .....</b>	<b>» 149</b>