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To Füsun . . .

Preface

In Turkish law, obligations may arise from legal transactions, in particular from contracts, and also from torts, cases of unjust enrichment, agency relationships without authorisation (*quasi-contractus*) and the law itself. However, since the most important source of obligations is contracts, this book focuses on contracts.

With the objective of providing an overview of the subject, the author analyses in particular the general provisions of the Turkish Code of Obligations (TCO arts. 1–48 and arts. 83–206) in five parts. The first part is concerned with the provisions pertaining to obligations arising from contracts (TCO arts. 1–48). In the second part, the provisions relating to the effect of obligations, especially performance and non-performance of obligations (TCO arts. 83–126) are analysed. The effect of obligations on third parties (TCO arts. 127–130) is also discussed in this part. The third part focuses on the extinguishment of obligations and limitation periods (TCO arts. 131–161). In the fourth part, joint and several debtors and creditors, conditions, earnest and forfeit money and penalty (TCO arts. 162–182) are explained. The last part concerns the assignment of claims, assumption of debt, transfer of contract and the joining of parties to an existing contract (TCO arts. 183–206).

It is evident that contract law is a broad subject. However, in this introductory book, the objective is to provide the reader with the main principles of Turkish contract law. That is why the author analyses particularly the general provisions of the Turkish Code of Obligations. Nevertheless, in order to provide a complete overview, certain provisions of the Turkish Code of Obligations relating to specific contracts, which are regulated in the second part of the Code, are also analysed. Moreover, in order to clarify certain subjects, provisions of the Turkish Civil Code, the Turkish Commercial Code and the Turkish Bankruptcy and Enforcement Law are also considered to the necessary extent.

Having regard to the objective of giving a complete and clear overview of Turkish contract law, the author seeks to avoid contentious arguments and to explain the subjects with the use of simple examples.

The author hopes that this book will be beneficial, especially for law students and practitioners who are not familiar with Turkish contract law.

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Oxford, UK İlhan Helvacı
May 2017

Introduction

Contracts usually constitute an obligational relationship (*rapport d'obligation*, *Schuldverhältnis*) between the contracting parties and specifically give rise to obligations. The obligational relationship created by a contract is referred to as a contractual obligational relationship, and the obligations arising out of it are referred to as contractual obligations.

However, certain contracts do not give rise to an obligational relationship; they amend or terminate an existing obligational relationship between the parties. Indeed, a contract that is concluded in order to amend the place or time of performance of an existing obligation is an example of a contract of this nature. Moreover, certain contracts are concluded in order to transfer, to amend, to terminate or to restrict a right. These contracts are further examples of contracts that do not give rise to any obligations.

Furthermore, there are also certain contracts concerning family law, for example, contracts relating to engagement or marriage, or the law of inheritance such as testamentary agreements and inheritance partition agreements. The Turkish Civil Code No 4721 of 22.11.2001 governs these contracts.[1]

The contracts that give rise to an obligational relationship are governed by the new Turkish Code of Obligations No 6098 of 11 January 2011, which came into force on 1 July 2012.[2]

[1]Official Gazette 08.12.2001; No: 24607. The new Turkish Civil Code replaced the former Turkish Civil Code No 743 of 17 February 1926, which had come into force on 4 October 1926 (Official Gazette 04.04.1926; No: 339). The former Civil Code was heavily influenced by the Swiss Civil Code. The new Civil Code is also similar to the Swiss Civil Code, albeit to a lesser degree.

[2]Official Gazette 04.02.2011; No 27836. The new Turkish Code of Obligations replaced the former Turkish Code of Obligations No 818 of 22 April 1926, which had come into force on 4 October 1926 (Official Gazette 08.05.1926; No: 366). The former Code was heavily influenced by the Swiss Code of Obligations. The new Code is also similar to the Swiss Code of Obligations, albeit to a lesser degree.

The Turkish Code of Obligations arts. 1–48 regulate contracts that give rise to an obligational relationship. However, these and the other general provisions of the Turkish Code of Obligations may also be applied to contracts regarding family law or the law of inheritance. Indeed, according to TCC art. 5, the general provisions laid down in the Code of Obligations (and Civil Code) also apply to other legal relationships concerning private law, provided that their applications are appropriate to the nature of the legal relationship. In addition, pursuant to TCO art. 646, the Turkish Code of Obligations completes the Turkish Civil Code as it forms Part V of the Civil Code.

The Turkish Code of Obligations arts. 49–76 govern obligational relationships arising from tort, and arts. 77–82 govern obligational relationships arising out of unjust enrichment. As the subject matter of this book is contract law, these obligational relationships arising from tort and unjust enrichment are not analysed.

As mentioned above, contractual obligational relationships or, in short, contracts usually give rise to obligations. An obligation is a legal tie (*vinculum iuris*) between the debtor (obligor) and the creditor (obligee) by which the debtor is bound to perform or refrain from performing specified conduct. In this context, the creditor may be under an obligation to give (*e.g.*, to transfer ownership of a car), to do (*e.g.*, to build a house) or not to do (to refrain from doing) (*e.g.*, not to compete).

A contract may give rise to several obligations (duties). Some of them are primary in nature, whereas some of them are subsidiary in nature. For example, in a contract of sale, the primary obligation (main duty) of the seller is to transfer ownership of the subject matter of the contract to the buyer. However, the seller may be under certain subsidiary obligations (subsidiary duties) along with the primary obligation, such as packing the goods, giving necessary information or instructions for their proper use. The primary obligations are what define the contract.

As a general rule, the non- or improper performance of the primary obligation may give rise to secondary obligations such as compensation (damages).

A contractual obligational relationship or, in short, a contract may also be the source of formative rights (*droit formateur*, *Gestaltungsrecht*) such as the right to terminate a contract or the right to withdraw from a contract. Furthermore, a contract may lead to certain defences where there has been a non- or an improper performance on the part of one of the parties. For example, in a sale contract, if the subject matter of the contract is defective, then the buyer may raise the defect as a defence.

It should be noted that when persons engage with one another in order to make a contract, they are also under a duty to protect each other's assets and personal rights. The basis of these pre-contractual duties is the principle of good faith (TCC art. 2).

Contents

List of Abbreviations

art.	Article
BGB	German Civil Code
cf	*Confer*
DSA	Digital Signature Act
éd	Editeurs
eds.	Editors
e.g.	*exempli gratia*
etc.	et cetera
FCC	French Civil Code
ff.	*foliis*
fn	Footnote
i.e.	*id est*
LIA	Legal Interest and Default Interest Act
LRA	Land Registry Act
N	Number, Numéro, Nummer
No	Number
NPA	Notary Public Act
p	Page
par	Paragraph
RLR	Regulation of Land Registry
SCO	Swiss Code of Obligations
Sect.	Section
sent	Sentence
subcl	Subclause
subs	Subsection
TCBE	Turkish Code of Bankruptcy and Enforcement
TCC	Turkish Civil Code

TCO	Turkish Code of Obligations
TComC	Turkish Commercial Code
TCPA	Turkish Consumer Protection Act
TCPC	Turkish Civil Procedure Code
TL	Turkish Lira
TPC	Turkish Penal Code

Part I
Obligations Arising from Contracts

Chapter 1
Formation of the Contract

1.1 General[1]

A contract is a legally binding agreement (a legal transaction)[2] that is usually concluded between two parties. Therefore, it is generally referred to as a bilateral legal transaction. For instance, in a sale contract, there are two parties: a buyer and a seller. In a lease contract, there are also two parties: a lessor and a lessee. However, a contract may be concluded between more than two parties—*e.g.*, a partnership contract with multiple partners. Another example is an inheritance partition agreement made between more than two heirs. These kinds of contracts are referred to as multilateral legal transactions or, more precisely, as multilateral contracts.

The Turkish Code of Obligations regulates contracts as bilateral legal transactions. That is why the general provisions relating to contracts in the Turkish Code of Obligations are applicable to multilateral contracts only by analogy. As the Turkish Code of Obligations governs contracts as bilateral legal transactions, this book will also treat them as such.

The elements that are required for the formation of a contract are offer and acceptance. In addition, the parties must have the intention to establish a legal

[1] Antalya (2012), pp. 155–198; Aybay (2011), pp. 25–32; Becker (1941), art. 1–10; Berger (2012), pp. 207–221; Engel (1997), pp. 184–209; Eren (2015), pp. 227–263; Feyzioğlu (1976), pp. 59–101; Gauch et al. (2008), pp. 53–90; Honsell et al. (2003), art. 1–10; Kılıçoğlu (2013), pp. 52–75; Kocayusufpaşaoğlu (2014), pp. 165–213; Nomer (2015), pp. 36–48; Oser and Schönenberger (1929), Vorbemerkungen zum ersten Abschnitt (Art. 1–40), art. 1–10; Oğuzman and Öz (2015), pp. 49–79; Özsunay (1983), pp. 61–70; Reisoğlu (2014), pp. 62–70; Schwenzer (2009), pp. 182–210; Tekinay et al. (1993), pp. 81–99; Tercier (2004), pp. 112–129; Tercier et al. (2016), pp. 147–205; Thévenoz and Werro (2012), art. 1–10, and von Tuhr and Peter (1979), pp. 181–193.

[2] A juridical act, (*acte juridique*, *Rechtsgeschäft*).

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relationship.[3] This intention may be express or implied. An agreement cannot be binding as a contract if it was made without any intention to create legal relations.

The offer is the first declaration of will (intention)[4] in time,[5] whereas acceptance is the second. In order for a contract to be concluded, the offer and the acceptance must be mutual and consistent (TCO art. 1 par. 1). The offer and the acceptance may be express or implied (TCO art. 1 par. 2).

1.2 The Offer

An offer is a unilateral declaration of will (intention) expressed by the offeror. This declaration contains the offeror's proposal to enter into a contract with the offeree. An offer may be made by a person who intends to undertake an obligation, that is to say, who intends to become a debtor. Furthermore, an offer may also be made by a person who intends to be entitled to a right, in other words, who intends to become a creditor.[6] In certain contracts, both parties undertake an obligation. Such contracts are referred to as bilateral contracts (*e.g.*, a sale contract, a lease contract).[7] Any of the parties may also make an offer on the conclusion of these types of contracts.

An offer must be addressed to a prospective contracting party. In this sense, it may be addressed to determined or undetermined persons (*e.g.*, the general public).[8] For instance, when a seller S makes an offer to sell a chattel for a determined price to a prospective buyer B, this offer is addressed to a determined person. On the other hand, an example of an offer being addressed to undetermined persons is when a shopkeeper displays a chattel indicating its price in the shop window. Indeed, according to TCO art. 8 par. 2, displaying goods with an indication of their price is considered to be an offer, unless the contrary is understood readily and clearly.

By the offer, the offeror expresses his willingness to enter into a contract on a specific set of terms on the mere acceptance of the offeree. Consequently, the offer, as a rule, must contain the objectively and subjectively necessary elements of the contract so that the offeree can form the contract with his mere acceptance.[9] In order for an offer to be valid, there are no specific form requirements. However, in

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[3] It is obvious that the parties must have the necessary capacity to act (*exercise des droits civils, Handlungsfähigkeit*) required to enter into a contract. For further explanations see Esener (2000), pp. 48–52; Ansay and Wallace (2002), pp. 84–87.

[4] *Déclaration de volonté*, *Willenserklärung*.

[5] Gauch et al. (2008), p. 69; Eren (2015), p. 244.

[6] von Tuhr and Peter (1979), §24, II, p. 182; Eren (2015), pp. 243–244; Feyzioğlu (1976), p. 69; Reisoğlu (2014), p. 64.

[7] Oğuzman and Öz (2015), p. 45; Eren (2015), p. 210; Reisoğlu (2014), p. 52; Thévenoz and Werro (2012), art. 1, N. 65; Tercier (2004), p. 59.

[8] Reisoğlu (2014), p. 65; Eren (2015), p. 244.

[9] For the objectively and subjectively essential elements of the contract, see Sect. 1.7.

certain cases, the contract to be concluded may require a specific form due to the law itself or due to the parties' agreement. In such cases, the offer must be made in compliance with this form requirement. Otherwise, the offer is invalid, and an invalid offer does not provide the offeree with the right to conclude the contract by accepting it. For example, a sale contract relating to real estate must be made before a land registry officer. Thus, if the owner of a field intends to sell it and erects a sign on the field indicating that it is to be sold and also indicates the price, then this is not deemed to be an offer.

As mentioned above, according to TCO art. 8 par. 2, displaying goods with an indication of their price, sending a price list, a tariff, etc. are considered to be offers unless the contrary is understood readily and clearly. However, merely sending unsolicited goods does not constitute an offer. In addition, the recipient does not have an obligation to keep or to return the goods (TCO art. 7).

1.3 Binding Effect of the Offer

The offeror is bound by the offer.[10] This means that the offeree's mere acceptance will result in the formation (conclusion) of the contract. In addition, the offeror, as a rule, is not entitled to revoke the offer and, thus, may not preclude the formation of the contract. The offeree (addressee) may reject the offer. Furthermore, he may make a counter-offer. In both cases, the binding effect of the original offer is terminated.

If the offeror dies or loses the capacity to act, which is necessary in order to enter into a contract, then the binding effect of the offer must be analysed according to two separate possibilities:[11] (1) if the person or the personal skills of the offeror are important for the offeree, then the offer is terminated. For example, an offer made by a well-known surgeon to a patient regarding vital surgery is terminated by the offeror's death or his subsequent incapacity to act; (2) in cases where the person or personal skills of the offeror are not important for the offeree, the binding effect of the offer nevertheless stands. For instance, if a seller makes an offer to sell a chattel to a buyer, then the death or subsequent incapacity of the seller does not affect the offer's binding effect. Consequently, where the offeror dies, the offer will bind his heirs. Similarly, if the offeror loses the capacity to act, the binding effect of the offer remains nevertheless. Another factor that may terminate the binding effect of an offer is the lapse of time, which is analysed in the paragraphs below.

[10]Eren (2015), p. 250; Oğuzman and Öz (2015), p. 57; Tekinay et al. (1993), p. 86; Feyzioğlu (1976), p. 71; Thévenoz and Werro (2012), art. 1, N. 84; Engel (1997), p. 194; Gauch et al. (2008), p. 73.

[11]von Tuhr and Peter (1979), § 24, III, p. 187; Reisoğlu (2014), pp. 67–68; Eren (2015), p. 260; Oğuzman and Öz (2015), p. 64.

1.3.1 Offer with Time Limit for Acceptance

If an offeror sets a time limit for acceptance, then the offeror will be bound by the offer until the fixed time expires. Where the addressee wants to accept the offer, his acceptance should reach the offeror before the set time expires (TCO art. 3).

1.3.2 Offer Without Time Limit for Acceptance

Where the offeror does not set a time limit for acceptance, it will be useful to consider two possibilities separately.

1.3.2.1 Among Persons Present

In cases where an offer is made without a time limit in the presence of the offeree, if the offeree wants to accept it, he must declare this forthwith. Otherwise, the offeror will no longer be bound (TCO art. 4 par. 1). It is worth noting that if the contracting parties communicate directly by telephone, electronically, etc., the offer is deemed to be made between persons present (TCO art. 4 par. 2). If, at the stage of the contract negotiations, both the contracting parties' agents are present or one party and the other party's agent are present, then the offer is nevertheless deemed to be made between persons present.

1.3.2.2 Among Persons Not Present

Where an offer is made without a time limit in the absence of an offeree, the offeror will remain bound for a reasonable time. That is to say, the offeror will be bound until such time as he might expect a reply, which is sent properly and in due time to reach him (TCO art. 5 par. 1).

A reasonable time is determined according to what a reasonable person would consider sufficient time to accept the offer.[12] It means that the offeree will need time for the offer to reach him, to think about the offer and to send the acceptance. Therefore, the expiration time varies according to the specific circumstances. For instance, the offeree in a contract for the sale of a car needs a longer period of time in comparison to the offeree in a simple book sale contract.

In certain cases, the offeror sends the offer properly but the offer is late in reaching the offeree. If the offeror does not know of this delay, then he may presume that the offer reached the offeree in due time (TCO art. 5 par. 2).

[12]Honsell et al. (2003), art. 5, N. 3; Gauch et al. (2008), p. 75; Eren (2015), p. 253; Reisoğlu (2014), p. 67; Tekinay et al. (1993), p. 89; Nomer (2015), pp. 46–47.

Moreover, although the offeree sends the acceptance in due course and time, it may reach the offeror after a reasonable period of time has expired. In this case, where the offeror does not want to be bound by the offer any longer, he must give notice immediately to the offeree of his intent not to be bound (TCO art. 5 par. 3). Otherwise, the contract will be formed.

1.4 Acceptance

Acceptance is a unilateral declaration of will (intention)[13] by the offeree and must be addressed to the offeror. For example, a seller S proposes to sell a chattel for a determined price to a prospective buyer B. Where this offer is accepted by B and this acceptance is addressed to S, the contract may be concluded. However, if the offer was accepted by a person other than the offeree (addressee), the contract may not be concluded. This is because, according to TCO art. 1 par. 1, the parties' declarations of will (intention) must be mutual. In addition, according to TCO art. 1 par. 1, acceptance must be in compliance with the offer. Otherwise, the contract will not be formed. For instance, despite the fact that a seller wants to sell a car for TL 10,000, a buyer may not wish to pay this amount and may propose to pay TL 8000 instead. In this case, the contract will also not be concluded.

There are no specific form requirements regarding the validity of an acceptance. However, if the contract to be concluded requires a form by virtue of law or of the parties' agreement, then the validity of the acceptance is subject to compliance with these form requirements. If the acceptance is non-compliant with the form requirements, then the contract is nevertheless concluded but is void.[14]

If the offeree dies or loses the capacity to act after sending the acceptance but before the acceptance reaches the offeror, this precludes the formation of the contract in cases where the offeree's person or his personal skills are important for the offeror.

Acceptance can be either express or implied (TCO art. 1 par. 2). When an offeree states his will clearly and explicitly to the offeror, the acceptance is deemed to be express. However, where the offeree does not state his will directly but demonstrates this will by any acts indicating assent, the acceptance is deemed to be implied. For instance, where a shopper selects an item in a supermarket and hands it to the cashier, such conduct demonstrates that he accepts the supermarket owner's offer at the price stated on the item. As mentioned above, TCO art. 8 par. 2 states that the display of goods with an indication of their price is, as a rule, considered to be an offer.

Even silence may constitute an implied acceptance. In certain cases, the offeror does not have to receive an express acceptance if the law, the special nature of the

[13] *Déclaration de volonté*, *Willenserklärung*.

[14] See Chap. 3.

transactions or the circumstances do not require it. In such a case, if the offeree does not reject the offer in a reasonable time, then the contract is considered to be concluded (TCO art. 6). For instance, TCO art. 503 does not require an express acceptance for the conclusion of an agency contract. Indeed, pursuant to said article, an agency contract is deemed to be concluded when an agent receives an offer with respect to the services he carries out in an official capacity or on a professional basis or he has publicly announced that he will accept offers relating to these services, unless the agent immediately rejects this offer.

1.5 Invitation to Offer (Invitation to Treat)[15]

Where the offeror, in his offer, declares that he reserves the right not to be bound by the offer or where such reservation arises from the nature or the circumstances of the transaction, there is only an invitation to make an offer (invitation to treat).[16] Therefore, mere acceptance of the invitation to offer by the addressee does not result in the formation of the contract. Accordingly, where the addressee intends to enter into a contract, he should make an offer.

The most common example of the difference between the offer and the invitation to offer is in ascending price auctions. For example, a seller wishes to sell certain goods by such an auction. If the seller declares that the subject matter of the auction is to be sold to the highest bidder, then the seller's declaration is deemed to be an offer and the highest bid is deemed to be an acceptance. However, if the seller does not intend to make a sale contract but merely wishes to collect certain proposals with regard to a probable sale contract and declares this intention, then this declaration is deemed to be an invitation to offer. Consequently, the participants' bids are deemed to be an offer (TCO art. 275 par. 1). These explanations are also applicable to reverse auctions (procurement auctions)—*i.e.*, a type of auction in which the price of the goods is decreased with each bid.[17]

Advertisements in newspapers, on TV or on the Internet[18] may not be considered to be an offer, even if they contain the price of the goods to be sold or the service to be rendered. On the contrary, such advertisements must be considered as an invitation to offer. Accordingly, the purchaser's conduct, such as clicking on an advertisement on the Internet, is deemed to be an offer. In such a case, the counterparty's acceptance may be express or implied. For example, accepting online

[15] *Invitatio ad offerendum.*

[16] Tercier (2004), p. 120; Gauch et al. (2008), p. 69; von Tuhr and Peter (1979), § 24, II, p. 183; Tekinay et al. (1993), pp. 84–85; Eren (2015), pp. 246–247; Reisoğlu (2014), p. 65; Tercier et al. (2016), p. 190; Kocayusufpaşaoğlu (2014), p. 182.

[17] For instance, a company intends to purchase certain goods or services and the price will be determined by the lowest bid. Thus, prospective sellers or providers underbid each other.

[18] For contracts that are concluded on the Internet see İnal (2005), Erten (2009).

payment by credit card is deemed to be an implied acceptance. However, in cases where a person is able to download a program online, the advertising of the program on the Internet is deemed to be an offer and the customer clicking on the advertisement is deemed to be an acceptance.[19]

Even though a vending machine displays goods and indicates their price, the conduct of the seller who operates the vending machine, in the view of the author, may only be deemed as an invitation to offer, rather than an offer. Consequently, when a customer puts the necessary money for the item that he wishes to buy in the machine's slot, then his act is deemed to be an offer and the machine's delivery of the goods is deemed to be an acceptance.[20]

Tenders are also considered to be an invitation to offer. Indeed, where a person invites others to submit tenders regarding a particular project, a sale contract or a lease contract, as a rule, this invitation is simply an invitation to offer. The offers are made by the persons who submit the tenders. If the person who invited them to submit tenders accepts one of them, then the contract is concluded.

1.6 Intention to Create a Contract

As a general principle, a person who makes or accepts an offer must have the intention to be legally bound. If a person makes a declaration of will[21] without having the intention to be legally bound, there is either a *reservatio mentalis* (mental reservation) or a declaration that is not serious.

In the case of *reservatio mentalis*, a person declares that he intends to make a contract but, in reality, he does not have such an intention. In this case, if the declaring party's real intention is hidden from the other party, then the contract is concluded according to the receiving party's understanding.[22] The declaring party is not entitled to assert that the contract is not concluded.[23] As an example, in a sale auction, a bidder does not intend to buy the goods to be sold. However, he participates in the auction and makes an offer by submitting the highest bid. The auctioneer, being unaware of the real intention of the bidder, accepts this offer. In this case, the contract is concluded and the bidder is not entitled to assert that his real intention was, for example, to increase the price of the goods but not to buy the goods.

In the case of a frivolous declaration, there is a declaration apparently made as a joke, on stage, or for teaching purposes. The declaring party's real intention is not to

[19] Oğuzman and Öz (2015), p. 54; Kocayusufpaşaoğlu (2014), p. 188.

[20] See Kocayusufpaşaoğlu (2014), p. 181.

[21] *Déclaration de volonté*, *Willenserklärung*.

[22] Engel (1997), p. 223; Thévenoz and Werro (2012), art. 18, N. 76; Oğuzman and Öz (2015), pp. 90–91.

[23] See BGB §116.

create a contract. In this instance, as opposed to the above-mentioned case, the declaration of will has no legal effect. However, pursuant to the 'trust theory' (*théorie de la confiance, Vertrauenstheorie*), if the addressee does not know of and, as a reasonable person, should not know that this declaration is frivolous, then the contract is concluded according to his understanding.[24] In such a case, the declaring party (for example, the joking party) is entitled to rescind (avoid) the contract according to the provisions relating to mistake in the declaration of will (intention).[25]

1.7 Content of the Agreement

In order to form a contract, the parties must agree on all of the necessary elements of the contract. The necessary elements of a contract are divided into two categories: (1) objectively essential elements and (2) subjectively essential elements.

Objectively essential elements (*essentialia negotii*) constitute the minimum contents of a contract in order for it to be valid and legally binding. Such elements form the core of the contract by themselves (*per se*), and thus, they are indispensable (*conditio sine qua non*) for the conclusion of the contract. In other words, they must be determined in order to individualise the contract.[26] As a general rule, where the parties do not agree on the objectively necessary elements, the contract will not be concluded. For instance, in a sale contract, a description of the goods and the price are the objectively necessary elements. If the parties do not agree on these elements, the contract will not be concluded.[27] At this point, it should be kept in mind that in a sale contract, the price of the goods does not have to be determined. It is sufficient for this price to be determinable. Indeed, according to TCO art. 233, where the buyer has placed a definite order without indicating the price, the goods are deemed to have been sold at the average market price at the time and place of performance. Moreover, the objectively essential elements of the contract may be determinable. In other words, the parties may agree as to how these elements will be determined in the future.

Subjectively essential elements are subsidiary elements of the contract. They are not objectively indispensable for the formation of the contract, but they may be necessary for one or both of the parties in order to form the contract. In other words,

[24] See BGB §118.

[25] Oğuzman and Öz (2015), p. 91; Eren (2015), p. 348, See Sect. 11.1.2.

[26] von Tuhr and Peter (1979), § 20, VIII, 1, p. 155; Becker (1941), art. 2, N. 4; Gauch et al. (2008), p. 62; Tercier (2004), pp. 113–114; Reisoğlu (2014), p. 63; Eren (2015), p. 234; Oğuzman and Öz (2015), p. 72; Feyzioğlu (1976), pp. 65–66; Kocayusufpaşaoğlu (2014), pp. 174–175; Nomer (2015), p. 45; Tercier et al. (2016), p. 179.

[27] von Tuhr and Peter (1979), § 20, VIII, 1, p. 155; Becker (1941), art. 2, N. 5; Oğuzman and Öz (2015), p. 72.