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à la Faculté de droit
et des sciences
économiques de Paris*

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DE QUELQUES OBLIGATIONS ACCESSOIRES AU CONTRAT DE TRAVAIL

Gérard-Henri Diotallevi

*Préface de
Pierre Bailly*

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lextenso éditions

Quelques Obligations Accessoires Contrat Travail

Blaise Carron, Pierre Wessner



Quelques Obligations Accessoires Contrat Travail:

De quelques obligations accessoires au contrat de travail Gérard-Henri Diotallevi, 2015-08-18 En dehors de la loi loto sensu la volonté des parties n'est pas la seule source normative qui pèse sur le contrat de travail Le juge habilité par l'article 1135 du Code civil y accessoirise des obligations qu'il crée à partir de règles existantes Le processus ne relève ni de l'interprétation ni du mécanisme procédural mais d'un cheminement complet qui aboutit à combler les lacunes du contrat ou de la loi L'origine est recherchée dans la nature du contrat travailliste articulée entre un donné économique et un construit juridique Le mécanisme complet remontant au-delà du Code civil se projette aussi vers un droit en devenir lorsqu'il interpelle la norme irrigant la Common Law et qui profile une jurisprudence du raisonnable dans une matière où la bonne foi régnait en maître Assis sur une exigence forte de proportionnalité entre les droits de l'employeur et les obligations du salarié il naît par analogie en parpillant dans la relation de travail des obligations circonstanciées dans l'intérêt d'une meilleure justice contractuelle

Contrats et obligations conventionnelles en droit luxembourgeois Pascal Ancel, 2015-10-22 Cet ouvrage est le premier manuel de droit luxembourgeois des contrats Il en présente de manière pédagogique les principaux aspects de la théorie générale du contrat formation et effets en intégrant au passage les règles générales du droit des obligations modalités transmission exécution extinction dont le contrat est le domaine d'application privilégié Il a traité dans une approche intrinsèquement comparative visant à situer les solutions du droit luxembourgeois non seulement au sein du système commun aux trois pays du Code civil mais également par rapport aux solutions d'autres pays qui ont pu inspirer son évolution notamment dans le monde germanique ainsi que par rapport aux solutions en gestation d'un potentiel droit européen des contrats Cette ouverture comparative contribue à donner à cet ouvrage un caractère moins dogmatique que celui qu'ont habituellement les manuels de droit civil Même si son but premier est de donner aux lecteurs une description claire et précise des solutions reçues au Luxembourg ces solutions ne sont jamais présentées comme une vérité incontournable la comparaison avec les droits des pays voisins et notamment des deux autres pays du Code civil les faisant apparaître comme des manières parmi d'autres de répondre aux multiples problèmes que pose le droit des contrats Pour cette raison le présent manuel devrait trouver un public au-delà du cercle des étudiants auxquels il est d'abord destiné Pour les praticiens il pourra indiquer sur les différentes questions les tenants et les aboutissants des solutions actuelles et les manières possibles de les faire valuer ou de construire les solutions potentielles lorsqu'il n'en existe pas encore sans nécessairement se laisser enfermer dans une application automatique du droit français Cet ouvrage ne manquera pas d'intéresser de nombreux juristes français ou belges qui pourraient y trouver des éclairages nouveaux de nature à revivifier quelques questions stylisées par une pensée trop exclusivement nationale PROPOS DE L'AUTEUR Pascal Ancel est Professeur de droit civil à la Faculté de droit économie finance depuis le 1er septembre 2011 Il y enseigne le droit des contrats et le droit des sûretés après avoir fait la plus grande partie de sa carrière dans les universités françaises il a choisi d'intégrer l'Université du Luxembourg en raison du caractère international

de ses quipes et de ses programmes qui permet d'ouvrir de nouveaux champs la recherche juridique et de réfléchir aux indispensables évolutions de l'enseignement du droit dans un contexte de globalisation et d'europanisation. Les recherches de Pascal Ancel couvrent différents champs du droit privé : droit des sociétés, arbitrage, médiation, responsabilité civile, mais depuis le milieu des années 1990 elles se sont principalement orientées autour de la théorie générale du contrat enrichie par une approche comparatiste. Outre ses nombreux travaux dans ce domaine, Pascal Ancel a notamment participé en 2004 à la rédaction d'un avant-projet français de réforme du droit des obligations.

Les sources des obligations Stéphane Obellianne, 2015-04-14

Notion plurale la source des obligations se compose en source formelle, source technique et source substantielle. Les sources formelles désignent le fondement juridique partir duquel seront dégagés les sources techniques fruit de l'interprétation judiciaire. Les sources substantielles ont été définies comme les conditions concrètes de naissance de l'obligation. Néanmoins de l'application des notions techniques réalisées par les magistrats, elles s'articulent autour de la liberté du débiteur et la protection du créancier. L'approche classique a été définie comme la politique qui consacre la liberté du débiteur. Contenue en l'article 1370 du Code civil, elle plonge ses racines dans le passé et s'illustre aujourd'hui travers de nombreux concepts. L'opposée l'approche moderne fait prévaloir la protection du créancier. Consacrée indirectement, elle laisse intact l'ordre technique existant et s'applique à partir d'applications renouvelées des notions. Consacrée directement, elle donnera naissance de nouvelles notions dont certaines recevront une traduction formelle. Une nouvelle approche de la liberté est souhaitable. L'acte juridique a été redéfini comme la libre création d'une croyance légitime. Le fait juridique consiste en la création dommageable d'un risque anormal. En chacune de ces sources, l'expression de la liberté est appréciée en la personne du débiteur, tandis que le produit de la liberté est valu en la personne du créancier. Par ailleurs, l'approche libérale fait aussi l'objet d'un dépasement, la faveur de celui-ci l'obligation se traduira par une charge individuelle définitive d'une part et une charge collective finale d'autre part.

Les indispensables du droit commercial Lamia El Badawi, 2023-06-13

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que la représentation des parties Il présente également le contrat et l'enrichissement illégitime en tant que sources de l'obligation La relation précontractuelle fait l'objet d'une analyse détaillée et avec elle le concept précontractuel de responsabilité fondée sur la confiance Un index et une table des dispositions légales citées favorisent la recherche des passages pertinents pour répondre une question précise *Quelques propos sur la rupture du contrat de travail* Steve Gilson, 2008

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