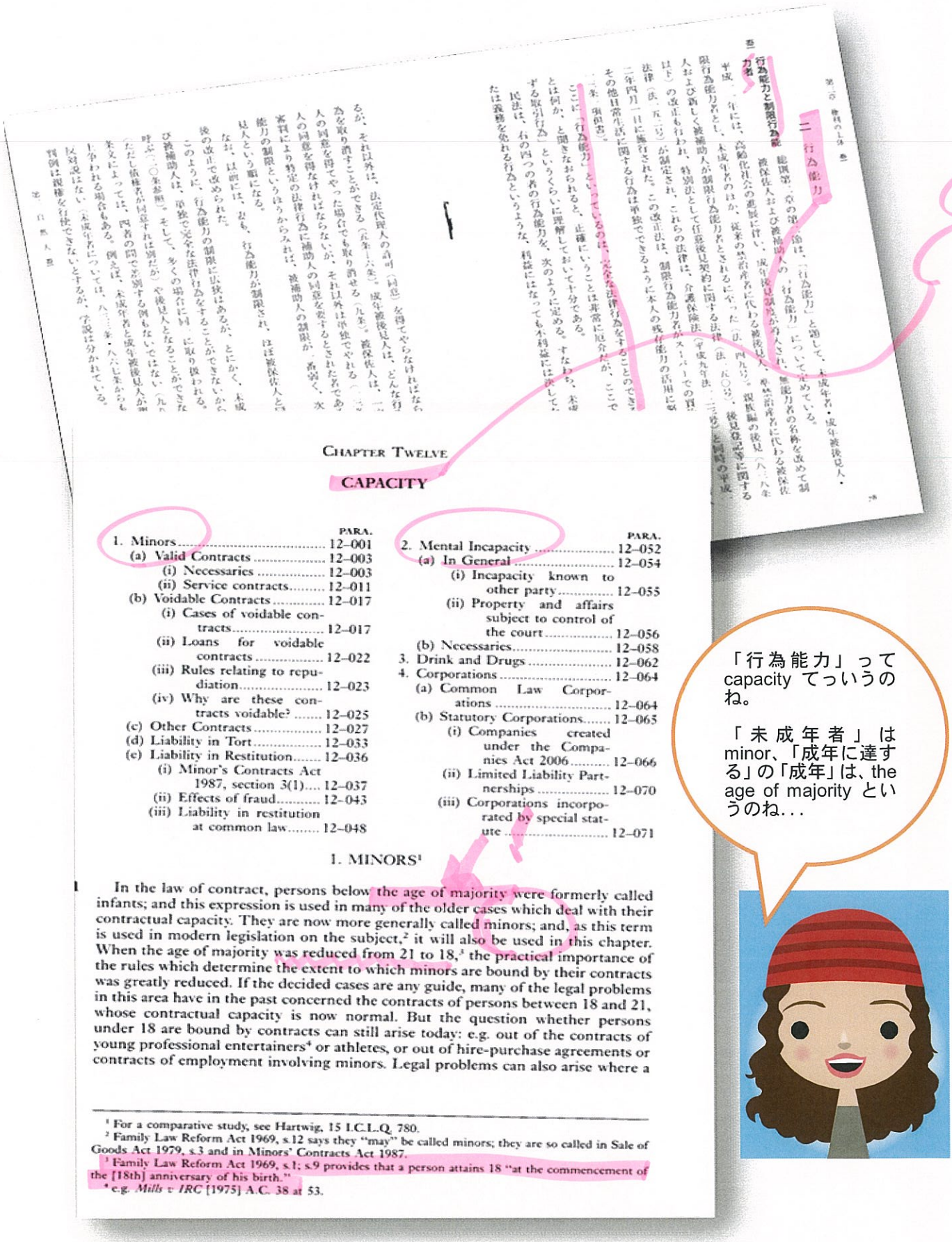
# (1) 基本的な「ことば」を確認してみよう



CHAPTER TWELVE

CAPACITY

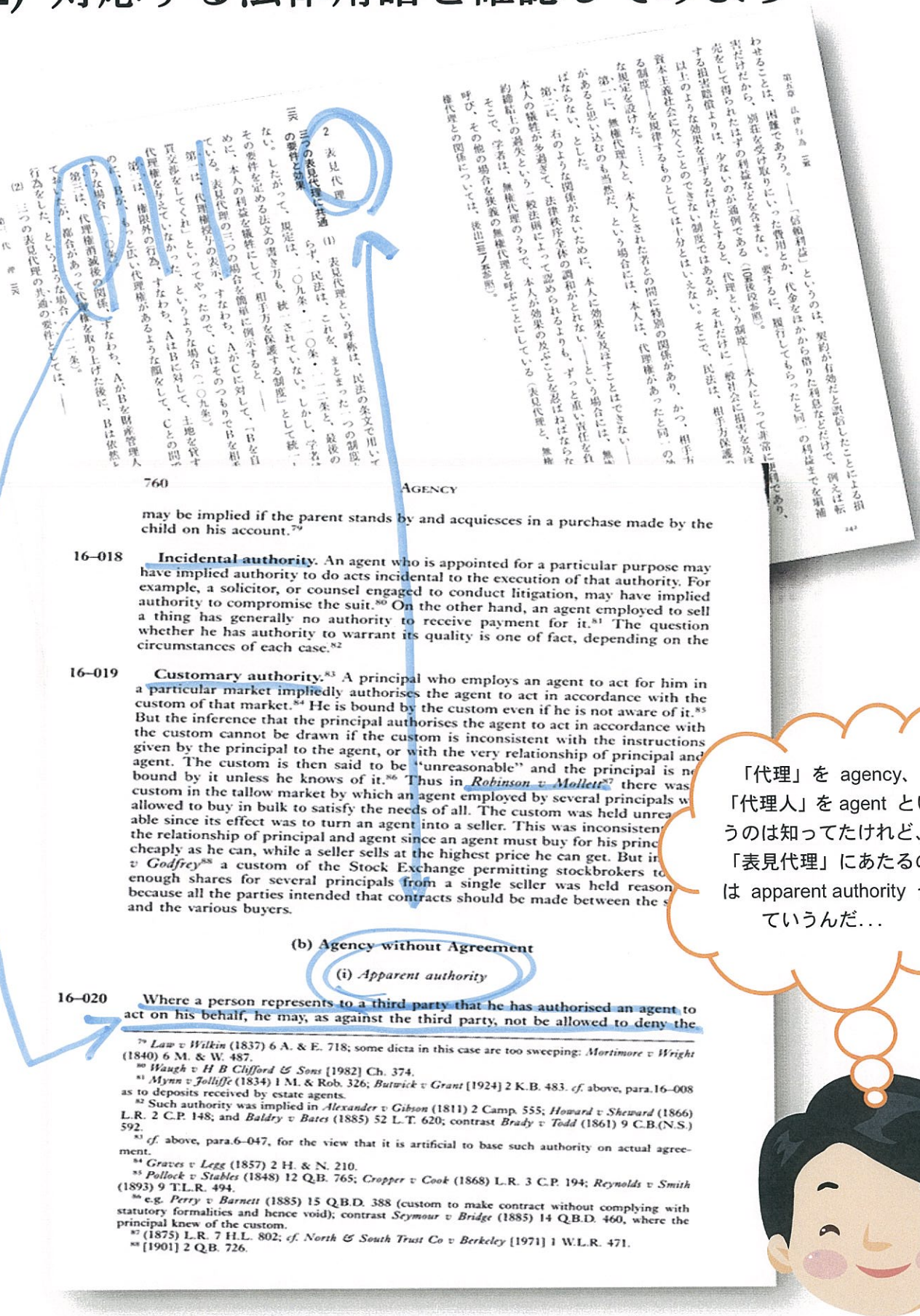


## 1. MINORS[1]

In the law of contract, persons below the age of majority were formerly called infants; and this expression is used in many of the older cases which deal with their contractual capacity. They are now more generally called minors; and, as this term is used in modern legislation on the subject,[2] it will also be used in this chapter. When the age of majority was reduced from 21 to 18,[3] the practical importance of the rules which determine the extent to which minors are bound by their contracts was greatly reduced. If the decided cases are any guide, many of the legal problems in this area have in the past concerned the contracts of persons between 18 and 21, whose contractual capacity is now normal. But the question whether persons under 18 are bound by contracts can still arise today: e.g. out of the contracts of young professional entertainers[4] or athletes, or out of hire-purchase agreements or contracts of employment involving minors. Legal problems can also arise where a

[1] For a comparative study, see Hartwig, 15 I.C.L.Q. 780.
[2] Family Law Reform Act 1969, s.12 says they "may" be called minors; they are so called in Sale of Goods Act 1979, s.3 and in Minors' Contracts Act 1987.
[3] Family Law Reform Act 1969, s.1; s.9 provides that a person attains 18 "at the commencement of the [18th] anniversary of his birth."
[4] e.g. *Mills v IRC* [1975] A.C. 38 at 53.

# (2) 対応する法律用語を確認してみよう



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may be implied if the parent stands by and acquiesces in a purchase made by the child on his account.[79]

16–018 **Incidental authority.** An agent who is appointed for a particular purpose may have implied authority to do acts incidental to the execution of that authority. For example, a solicitor, or counsel engaged to conduct litigation, may have implied authority to compromise the suit.[80] On the other hand, an agent employed to sell a thing has generally no authority to receive payment for it.[81] The question whether he has authority to warrant its quality is one of fact, depending on the circumstances of each case.[82]

16–019 **Customary authority.**[83] A principal who employs an agent to act for him in a particular market impliedly authorises the agent to act in accordance with the custom of that market.[84] He is bound by the custom even if he is not aware of it.[85] But the inference that the principal authorises the agent to act in accordance with the custom cannot be drawn if the custom is inconsistent with the instructions given by the principal to the agent, or with the very relationship of principal and agent. The custom is then said to be "unreasonable" and the principal is n bound by it unless he knows of it.[86] Thus in *Robinson v Mollett*[87] there was custom in the tallow market by which an agent employed by several principals w allowed to buy in bulk to satisfy the needs of all. The custom was held unrea able since its effect was to turn an agent into a seller. This was inconsisten the relationship of principal and agent since an agent must buy for his princ cheaply as he can, while a seller sells at the highest price he can get. But ir *v Godfrey*[88] a custom of the Stock Exchange permitting stockbrokers to enough shares for several principals from a single seller was held reason because all the parties intended that contracts should be made between the s and the various buyers.

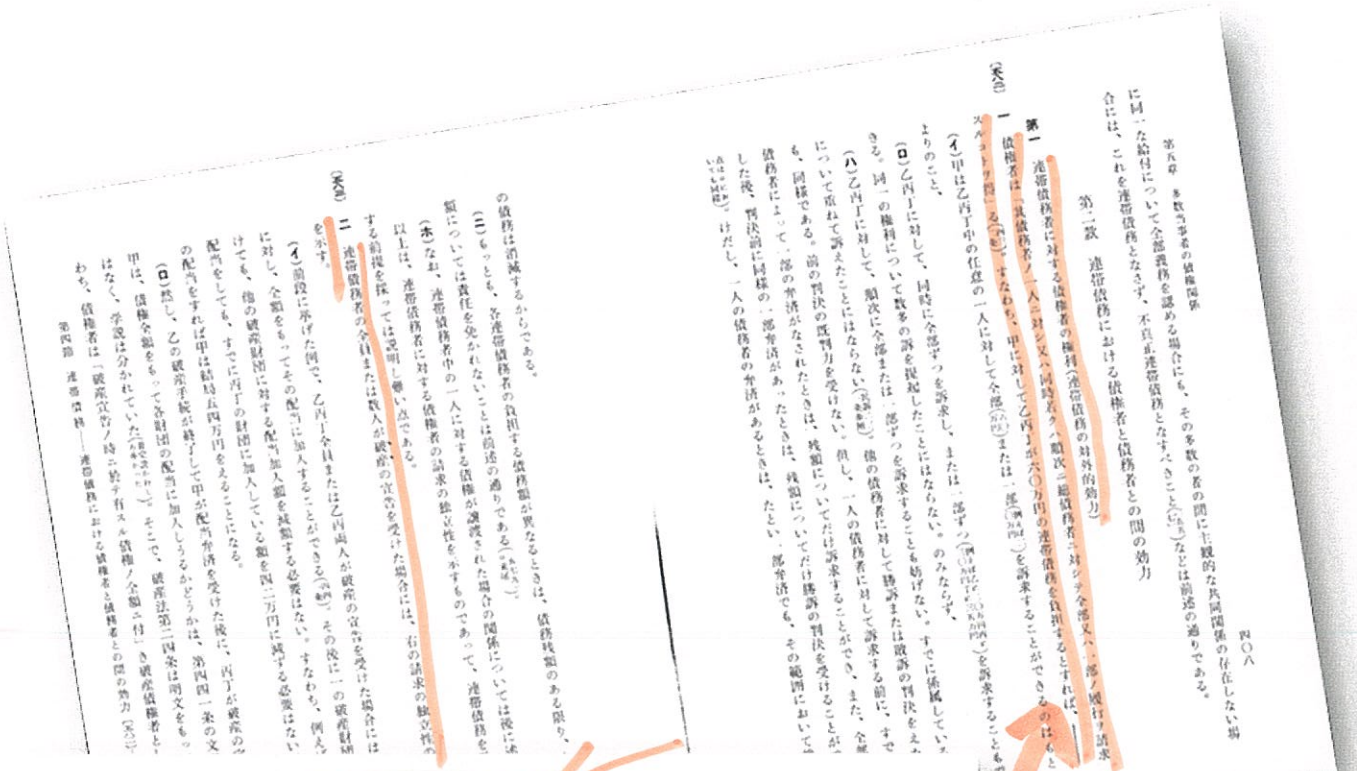
### (b) Agency without Agreement

#### (i) *Apparent authority*

16–020 Where a person represents to a third party that he has authorised an agent to act on his behalf, he may, as against the third party, not be allowed to deny the

[79] *Law v Wilkin* (1837) 6 A. & E. 718; some dicta in this case are too sweeping: *Mortimore v Wright* (1840) 6 M. & W. 487.
[80] *Waugh v H B Clifford & Sons* [1982] Ch. 374.
[81] *Mynn v Jolliffe* (1834) 1 M. & Rob. 326; *Butwick v Grant* [1924] 2 K.B. 483. *cf.* above, para.16–008 as to deposits received by estate agents.
[82] Such authority was implied in *Alexander v Gibson* (1811) 2 Camp. 555; *Howard v Sheward* (1866) L.R. 2 C.P. 148; and *Baldry v Bates* (1885) 52 L.T. 620; contrast *Brady v Todd* (1861) 9 C.B.(N.S.) 592.
[83] *cf.* above, para.6–047, for the view that it is artificial to base such authority on actual agreement.
[84] *Graves v Legg* (1857) 2 H. & N. 210.
[85] *Pollock v Stables* (1848) 12 Q.B. 765; *Cropper v Cook* (1868) L.R. 3 C.P. 194; *Reynolds v Smith* (1893) 9 T.L.R. 494.
[86] e.g. *Perry v Barnett* (1885) 15 Q.B.D. 388 (custom to make contract without complying with statutory formalities and hence void); contrast *Seymour v Bridge* (1885) 14 Q.B.D. 460, where the principal knew of the custom.
[87] (1875) L.R. 7 H.L. 802; *cf. North & South Trust Co v Berkeley* [1971] 1 W.L.R. 471.
[88] [1901] 2 Q.B. 726.

# (3) ちがいを確認してみよう



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REPORTER'S NOTE

This Section deals with part of the subject matter covered in former §§ 111–13. The subject matter of former § 111(2) is now covered in § 297, and the balance of former §§ 111–13 is now covered in § 289. See 4 Corbin, Contracts §§ 925–27 (1951 & Supp. 1980); 2 Williston, Contracts §§ 316–18A (3d ed. 1959).

*Comment b.* That the changes made by remedial statutes are primarily procedural, and do not affect the substance of the obligation, see Clayman v. Goodman Props., 518 F.2d 1026 (D.C. Cir. 1973). Compare Lithia Lumber Co. v. Lamb, 250 Or. 444, 443 P.2d 647 (1968).

*Comment c.* For an example of the erosion of the requirement of literal words of severance to overcome the presumption that two or more parties undertaking an obligation do so jointly, see Alexander v. Wheeler, 64 A.D.2d 837, 407 N.Y.S.2d 319 (4th Dep't 1978). There, the court cited and applied U.S. Printing & Lithograph Co. v. Powers, 233 N.Y. 143, 152, 135 N.E. 225, 227 (1922), which had required words of severance. Although the Alexander court found no words of severance, it did not stop at this inquiry, but also examined the testimony to determine whether it was the intention of the parties that any individual signatory undertake a several obligation. Upon finding no such intention, the court construed the agreement as intending a joint obligation. See also Federal Deposit Ins. Corp. v. Bismarck Inv. Corp., 547 P.2d 212 (Utah 1976). Illustration 1 is based on Illustration 2 to former § 113. Illustration 2 is based on Alpaugh v. Wood, 53 N.J.L. 638, 23 A. 261 (Ct. Err. & App. 1891); cf. Welch v. Sherwin, 300 F.2d 716 (D.C. Cir. 1962); Trenton Potteries v. Oliphant, 58 N.J. Eq. 507, 43 A. 723 (Ct. Err. & App. 1899). Illustration 3 is based on Illinois Fuel Co. v. Mobile & O.R.R., 319 Mo. 899, 8 S.W.2d 834, cert. denied, 278 U.S. 640 (1928); cf. Racine Wagon & Carriage Co. v. Legeois, 120 Wis. 497, 98 N.W. 218 (1904) ("½ bill to each"). Illustration 4 is based on Illustration 1 to former § 113; compare Demas v. Convention Motor Inns, 268 S.C. 186, 232 S.E.2d 724 (1977).

*Comment d.* Illustration 5 was part of Comment *a* to former § 113; see also Demas v. Convention Motor Inns, supra.

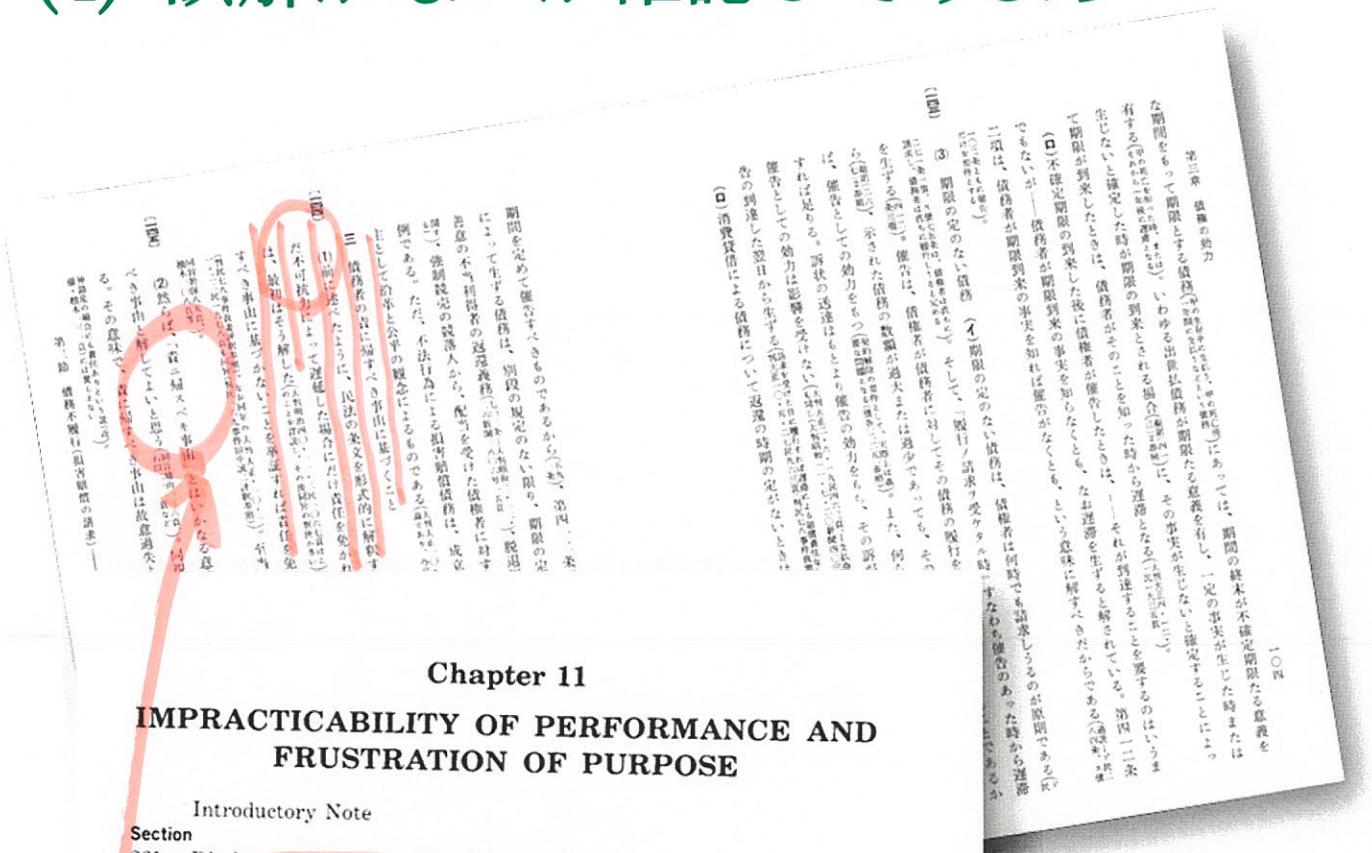
**§ 289. Joint, Several, and Joint and Several Promisors of the Same Performance**

**(1) Where two or more parties to a contract promise the same performance to the same promisee, each is bound for the whole performance thereof, whether his duty is joint, several, or joint and several.**

**(2) Where two or more parties to a contract promise the same performance to the same promisee, they incur only a joint duty unless an intention is mani-**



# (4) 誤解がないか確認してみよう



## Chapter 11

## IMPRACTICABILITY OF PERFORMANCE AND FRUSTRATION OF PURPOSE

Introductory Note

Section

261. Discharge by Supervening Impracticability
262. Death or Incapacity of Person Necessary for Performance
263. Destruction, Deterioration or Failure to Come into Existence of Thing Necessary for Performance
264. Prevention by Governmental Regulation or Order
265. Discharge by Supervening Frustration
266. Existing Impracticability or Frustration
267. Effect on Other Party's Duties of a Failure Justified by Impracticability or Frustration
268. Effect on Other Party's Duties of a Prospective Failure Justified by Impracticability or Frustration
269. Temporary Impracticability or Frustration
270. Partial Impracticability
271. Impracticability as Excuse for Non-Occurrence of a Condition
272. Relief Including Restitution

**Introductory Note:** Contract liability is strict liability. It is an accepted maxim that *pacta sunt servanda*, contracts are to be kept. The obligor is therefore liable in damages for breach of contract even if he is without fault and even if circumstances have made the contract more burdensome or less desirable than he had anticipated. (As to the effect of hardship on equitable remedies, see § 364(b).) The obligor who does not wish to undertake so extensive an obligation may contract for a lesser one by using one of a variety of common clauses: he may agree only to use his "best efforts"; he may restrict his obligation to his output or requirements; he may reserve a right to cancel the contract; he may use a flexible pricing arrangement such as a "cost plus" term; he may insert a *force majeure* clause; or he may limit his damages for breach. The extent of his obligation then depends on the application of the rules on interpretation stated in Chapter 9, The Scope of Contractual Obligations.

Even where the obligor has not limited his obligation by agreement, a court may grant him relief. An extraordinary circumstance may make performance so vitally different from what was reasonably to be expected as to alter the essential nature of that performance. In



best efforts つまり「最善の努力」という言葉を使うと責任が重くなるような感じがしてたけど、そうじゃいのね。
気をつけないと...