

PART THREE

CAPACITY OF PARTIES

PERSONAL INCAPACITY

TABLE OF CONTENTS

VOLUME I

Preface

Table of Statutes

Table of Statutory Instruments

Table of European Legislation

Table of International Statutory Material

Table of Cases

Table of European Cases

PART ONE

INTRODUCTION

1. INTRODUCTORY

1. Sources of English Contract Law

2. Definitions of Contract

3. Fundamental Principles of Contract Law

4. The Human Rights Act 1998 and Contracts

5. Classification of Contracts

6. Contracts Contained in Deeds

7. The Relationship between Contract and Tort

8. Contract and other Legal Categories

PART TWO

FORMATION OF CONTRACT

2. THE AGREEMENT

1. Preliminary

2. The Offer

3. The Acceptance

4. Termination of the Offer

5. Special Cases

Page
ix
xxiii
li
lxi
lxxiii
lxxvii
cdlv

PARA.
1-001
1-001
1-016
1-027
1-054
1-087
1-105
1-137
1-209

G. H. Treitel
2-001
2-001
2-003
2-027
2-087
2-111

S. J. Whittaker

G. H. Treitel

TABLE OF CONTENTS

6. Incomplete Agreement		2-113
7. Certainty of Terms		2-141
8. Conditional Agreements		2-150
9. Contractual Intention		2-161
3. CONSIDERATION	<i>G. H. Treitel</i>	3-001
1. Introduction		3-001
2. Definitions		3-004
3. Adequacy of Consideration		3-014
4. The Concept of "Valuable" Consideration		3-022
5. Past Consideration		3-026
6. Consideration Must Move from the Promisee		3-036
7. Compromise and Forbearance to Sue		3-046
8. Existing Duties as Consideration		3-061
9. Discharge and Variation of Contractual Duties		3-076
10. Part Payment of a Debt		3-115
11. Proprietary Estoppel		3-137
12. Special Cases		3-184
4. FORM	<i>S. J. Whittaker</i>	4-001
1. In General		4-001
2. Contracts for the Sale or other Disposition of an Interest in Land		4-010
5. MISTAKE	<i>H. G. Beale</i>	5-001
1. Introduction		5-001
2. Common Mistake		5-017
3. Mistakes in "Communication"		5-066
4. Non est Factum		5-102
5. Rectification of Written Agreements		5-110
6. MISREPRESENTATION	<i>H. G. Beale</i>	6-001
1. In General		6-001
2. What Constitutes Effective Misrepresentation		6-006
3. Damages for Misrepresentation		6-044
4. Rescission for Misrepresentation		6-108
5. Exclusion of Liability for Misrepresentation		6-139
6. Contracts Uberrimae Fidei		6-150
7. DURESS AND UNDUE INFLUENCE	<i>H. G. Beale</i>	7-001
1. Introduction		7-001
2. Duress		7-003
3. Undue Influence		7-057
4. Unconscionable Bargains and Inequality of Bargaining Power		7-130

TABLE OF CONTENTS

PART THREE

CAPACITY OF PARTIES

8. PERSONAL INCAPACITY	<i>S. J. Whittaker</i>	8-001
1. In General		8-001
2. Minors		8-002
3. Persons Lacking Mental Capacity		8-069
4. Drunken Persons		8-081
9. CORPORATIONS AND UNINCORPORATED ASSOCIATIONS	<i>D. D. Prentice</i>	9-001
1. Corporations		9-001
2. Unincorporated Associations		9-064
10. THE CROWN, PUBLIC AUTHORITIES AND THE EUROPEAN UNION	<i>P. P. Mitchell</i>	10-001
1. Introduction		10-001
2. Crown Contracts		10-004
3. Public Authorities		10-020
4. Tender Process Contracts		10-040
5. Estoppel		10-044
6. Public Procurement		10-049
11. POLITICAL IMMUNITY AND INCAPACITY	<i>C. G. J. Morse</i>	11-001
1. Foreign States, Sovereigns, Ambassadors and International Organisations		11-001
2. Alien Enemies		11-024

PART FOUR

THE TERMS OF CONTRACT

12. EXPRESS TERMS	<i>A. G. Guest</i>	12-001
1. Proof of Terms		12-002
2. Classification of Terms		12-019
3. Construction of Terms		12-041
4. Admissibility of Extrinsic Evidence		12-095
13. IMPLIED TERMS	<i>A. G. Guest</i>	13-001
14. EXEMPTION CLAUSES	<i>A. G. Guest</i>	14-001
1. In General		14-001
2. Principles of Construction		14-005
3. Fundamental Breach		14-020
4. Application of Principles of Construction to Particular Contracts		14-025
5. Exemption Clauses and Third Parties		14-039
6. Statutory Control of Exemption Clauses		14-059

TABLE OF CONTENTS

7. Common Law Qualifications	14-134
8. Force Majeure Clauses	14-140
15. UNFAIR TERMS IN CONSUMER CONTRACTS	<i>S. J. Whittaker</i> 15-001
1. Introduction	15-001
2. The Directive on Unfair Terms in Consumer Contracts and the UK Regulations	15-004
3. The Temporal Application of the Regulations	15-011
4. The Types of Contracts Governed by the Regulations	15-016
5. Contract Terms Excluded from the Regulations	15-040
6. The Requirement of Fairness	15-050
7. The Requirement of Plain and Intelligible Language	15-144
8. Choice of Law Clauses	15-148
9. The Prevention of Unfair Terms	15-149
PART FIVE	
ILLEGALITY AND PUBLIC POLICY	
16. ILLEGALITY AND PUBLIC POLICY	<i>D. D. Prentice</i> 16-001
1. Introduction	16-001
2. The Position at Common Law	16-003
3. Contracts Unenforceable by Statute	16-143
4. Enforcement of Collateral and Proprietary Rights	16-165
5. Severance	16-197
6. Pleading and Practice	16-207
PART SIX	
JOINT OBLIGATIONS, THIRD PARTIES AND ASSIGNMENT	
17. JOINT OBLIGATIONS	<i>A. S. Farrows</i> 17-001
18. THIRD PARTIES	<i>G. H. Treitel</i> 18-001
1. Introduction	18-001
2. The Common Law Doctrine	18-003
3. Scope	18-021
4. Contracts for the Benefit of Third Parties	18-043
5. Enforcement Against Third Parties	18-134
19. ASSIGNMENT	<i>A. S. Burrows</i> 19-001
1. Assignment	19-001
2. Vicarious Performance	19-081
3. Assignment and Negotiability	19-085
4. Assignment, Novation and Acknowledgment	19-086
20. DEATH AND BANKRUPTCY	<i>D. D. Prentice</i> 20-001
1. Death	20-001
2. Bankruptcy	20-015

TABLE OF CONTENTS

PART SEVEN	
PERFORMANCE AND DISCHARGE	
21. PERFORMANCE	<i>E. G. McKendrick</i> 21-001
1. In General	21-001
2. Time of Performance	21-011
3. Partial Performance of an Entire Obligation	21-028
4. Payment	21-040
5. Tender	21-084
22. DISCHARGE BY AGREEMENT	<i>E. G. McKendrick</i> 22-001
1. In General	22-001
2. Release	22-003
3. Accord and Satisfaction	22-012
4. Rescission	22-025
5. Variation	22-032
6. Waiver	22-040
7. Provision for Discharge in the Contract Itself	22-048
23. DISCHARGE BY FRUSTRATION	<i>E. G. McKendrick</i> 23-001
1. Introduction	23-001
2. The Test for Frustration	23-007
3. Illustrations of the Doctrine	23-020
4. The Limits of Frustration	23-058
5. The Legal Consequences of Frustration	23-070
24. DISCHARGE BY BREACH	<i>E. G. McKendrick</i> 24-001
1. In General	24-001
2. Renunciation	24-018
3. Impossibility Created by One Party	24-029
4. Failure of Performance	24-035
5. Consequences of Discharge	24-049
25. OTHER MODES OF DISCHARGE	<i>E. G. McKendrick</i> 25-001
1. Merger	25-001
2. Alteration or Cancellation of a Written Instrument	25-020
3. Miscellaneous Modes of Discharge	25-030
PART EIGHT	
REMEDIES FOR BREACH OF CONTRACT	
26. DAMAGES	<i>H. G. Beale</i> 26-001
1. The Nature of Damages for Breach of Contract	26-001
2. Compensable Heads of Loss	26-019

TABLE OF CONTENTS

3. Measures of Compensation		26-033
4. Measures that are not Strictly Compensatory		26-042
5. Causation and Contributory Negligence		26-057
6. Mitigation of Damage		26-077
7. Remoteness of Damage and Assumption of Responsibility		26-104
8. Particular Restrictions on Recovery of Damages		26-136
9. Illustrations of the Assessment of Damages		26-144
10. Liquidated Damages, Deposits and Forfeiture of Sums Paid		26-171
11. The Tax Element in Damages		26-204
12. Interest		26-214
27. SPECIFIC PERFORMANCE AND INJUNCTION	<i>G. H. Treitel</i>	27-001
1. Introduction		27-001
2. The "Adequacy" of Damages		27-005
3. Contracts Not Specifically Enforceable		27-020
4. Other Grounds for Refusing Specific Performance		27-030
5. Mutuality of Remedy		27-046
6. Specific Performance and Third Parties		27-049
7. Specific Performance with Compensation		27-054
8. Injunction		27-060
9. Damages and Specific Performance or Injunction		27-078
28. LIMITATION OF ACTIONS	<i>A. S. Burrows</i>	28-001
1. Periods of Limitation		28-001
2. Accrual of the Cause of Action		28-031
3. Computation of the Period		28-052
4. The Running of Time		28-064
5. Extension of the Period		28-071
6. Abridgement of the Period		28-112
7. Commencement of Proceedings		28-116
8. The Statute Bars the Remedy, Not the Right		28-126
9. Limitation in Equity		28-134
PART NINE		
RESTITUTION		
29. RESTITUTION	<i>G. Virgo</i>	29-001
1. Introduction		29-001
2. Unjust Enrichment		29-017
3. Restitution for Wrongs		29-143
4. Proprietary Restitutionary Claims		29-164
5. Defences		29-182

TABLE OF CONTENTS

PART TEN
CONFLICT OF LAWS

30. CONFLICT OF LAWS	<i>C. G. J. Morse</i>	30-001
1. Preliminary Considerations		30-001
2. Common Law: The Doctrine of the Proper Law of a Contract		30-005
3. The Rome Convention		30-017
4. The Rome I Regulation		30-129
5. Scope of the Applicable Law		30-304
<i>Index</i>		
VOLUME II		
31. AGENCY		8-023
32. ARBITRATION		16-022
33. BAILMENT		16-022
34. BILLS OF EXCHANGE AND BANKING		16-022
35. CARRIAGE BY AIR		16-022
36. CARRIAGE BY LAND		16-022
37. CONSTRUCTION CONTRACTS		16-022
38. CREDIT AND SECURITY		16-022
39. EMPLOYMENT		16-022
40. GAMBLING CONTRACTS		16-022
41. INSURANCE		16-022
42. RESTRICTIVE AGREEMENTS AND COMPETITION		16-022
43. SALE OF GOODS		16-022
44. SURETYSHIP		16-022

Please note that Volume I is available for sale separately from Volume II, so you will only have access to the above contents of Volume II if you have purchased both Volumes.

TABLE OF CONTENTS

PART FIVE

ILLEGALITY AND PUBLIC POLICY

16. ILLEGALITY AND PUBLIC POLICY

PART SIX

JOINT OBLIGATIONS, THIRD PARTIES AND ASSIGNMENT

17. JOINT OBLIGATIONS
18. THIRD PARTIES
19. ASSIGNMENT
20. DEATH AND BANKRUPTCY

PART SEVEN

PERFORMANCE AND DISCHARGE

21. PERFORMANCE
22. DISCHARGE BY AGREEMENT
23. DISCHARGE BY FRUSTRATION
24. DISCHARGE BY BREACH
25. OTHER MODES OF DISCHARGE

PART EIGHT

REMEDIES FOR BREACH OF CONTRACT

26. DAMAGES
27. SPECIFIC PERFORMANCE AND INJUNCTION
28. LIMITATION OF ACTIONS

PART NINE

RESTITUTION

29. RESTITUTION

TABLE OF CONTENTS

PART TEN

CONFLICT OF LAWS

30. CONFLICT OF LAWS

VOLUME II

Table of Statutes

Table of Statutory Instruments

Table of European Legislation

Table of International Statutory Material

Table of Cases

Table of European Cases

31. AGENCY

1. Agency in General
2. Examples of Types of Agent
3. Creation of Agency
4. Authority
5. Principal's Relations with Third Parties
6. Agent's Relations with Third Parties
7. Obligations of Principal and Agent inter se
8. Termination of Authority

F. M. B. Reynolds

32. ARBITRATION

1. Statutory Regulation
2. The Arbitration Agreement
3. Stay of Legal Proceedings
4. Commencement of Arbitral Proceedings
5. The Arbitral Tribunal
6. Jurisdiction of the Arbitral Tribunal
7. The Arbitral Proceedings
8. Powers of the Court
9. The Award
10. Costs of the Arbitration
11. Powers of the Court in Relation to the Award
12. Miscellaneous

A. G. Guest

33. BAILMENT

1. In General
2. Possession and Related Matters
3. Gratuitous Bailment
4. Bailments for Valuable Consideration

E. G. McKendrick

Page

xv

lxxi

xcv

xcix

cv

cdxi

PARA.

31-001

31-001

31-009

31-020

31-042

31-055

31-084

31-113

31-164

32-001

32-002

32-020

32-050

32-071

32-079

32-097

32-102

32-119

32-127

32-144

32-152

32-189

33-001

33-001

33-009

33-032

33-044

TABLE OF CONTENTS

34. BILLS OF EXCHANGE AND BANKING	<i>R. J. A. Hooley</i>	34-001
1. Negotiable Instruments		34-001
2. Aspects of Banking Law		34-214
35. CARRIAGE BY AIR	<i>D. McClean</i>	35-001
1. Introduction		35-001
2. The International Conventions		35-002
3. Scope and Application of the Conventions		35-008
4. European Legislation		35-018
5. Liability of the Carrier		35-022
6. Non-international Carriage		32-073
36. CARRIAGE BY LAND	<i>P. J. S. MacDonald Eggers</i>	36-001
1. Introduction		36-001
2. Internal Carriage		36-007
3. International Carriage		36-079
37. CONSTRUCTION CONTRACTS	<i>J. Uff and V. Moran</i>	37-001
1. The Nature of Construction Contracts		37-001
2. Formation of Contract		37-043
3. Contract Terms		37-063
4. Particular Features		37-096
5. Payment		37-142
6. Sub-contracts		37-174
7. The Contract Administrator		37-186
8. Breach and Non-performance		37-203
9. Remedies by Enforcement		37-234
10. Disputes		37-254
38. CREDIT AND SECURITY	<i>E. Lomnicka</i>	38-001
1. The Consumer Credit Act 1974		38-001A
2. Loans and Interest		38-253
3. Hire-Purchase Agreements		38-301
4. Conditional Sale Agreements		38-438
5. Credit-sale Agreements		38-463
6. Credit and other Payment Cards, and Checks		38-471
7. Mortgages of Personal Property		38-517
8. Mortgages of Land		38-527
39. EMPLOYMENT	<i>M. R. Freedland</i>	39-001
1. Introduction		39-001
2. The Factors Identifying a Contract of Employment		39-010
3. Formation of the Contract		39-029
4. Collective Agreements and Statutory Awards of Terms		39-043
5. Rights and Duties Under and Associated with a Contract of Employment		39-054
6. Termination of the Contract		39-153
7. Remedies, and Rights Incidental to the Termination of Employment		39-189
8. Unfair and Discriminatory Dismissal		39-210

TABLE OF CONTENTS

9. Redundancy Payments and Procedure		39-244
10. Statutory Dispute Resolution Provisions		39-260
40. GAMBLING CONTRACTS	<i>G. H. Treitel</i>	40-001
1. Introduction		40-001
2. Enforceability of gambling contracts		40-010
41. INSURANCE	<i>P. J. S. MacDonald Eggers</i>	41-001
1. The Nature of Insurance		41-001
2. Insurable Interest		41-005
3. The Event Insured Against		41-018
4. Uberrima Fides		41-030
5. The Parties		41-045
6. The Contract of Insurance		41-050
7. The Terms of the Insurance Contract		41-060
8. Assignment		41-067
9. Claims		41-070
10. The Rights of the Insurer upon Payment		41-089
11. Specific Types of Insurance Contract		41-095
42. RESTRICTIVE AGREEMENTS AND COMPETITION	<i>R. Whish</i>	42-001
1. Introduction		42-001
2. Competition Rules Under the TFEU		42-004
3. United Kingdom Competition Law		42-077
43. SALE OF GOODS	<i>A. G. Guest, F. M. B. Reynolds and H. G. Beale</i>	43-001
1. In General		43-001
2. Formation of the Contract		43-008
3. Terms of the Contract		43-042
4. Consumer Protection		43-114
5. Effects of the Contract		43-166
6. Performance of the Contract		43-270
7. Remedies of the Seller		43-340
8. Remedies of the Buyer		43-424
9. Supplementary		43-486
44. SURETYSHIP	<i>S. J. Whittaker</i>	44-001
1. In General		44-001
2. Formation of the Contract		44-019
3. Formalities		44-041
4. Construction of the Contract		44-061
5. Discharge of Debtor		44-081
6. Discharge of Surety		44-083
7. Surety's Right to Indemnity and Contribution		44-123
8. Legislative Protection of Sureties		44-144
<i>Index</i>		Page 1785