CONTENTS

Table of Cases				
Table of Legislation xx				
1	IN'	TRODUCTION	1	
	1.	The Aims of this Book	1	
	2.	The Scope of the Law of Contract	3	
	3.	Transactions	7	
	4.	Transnational Contract Law	8	
	5.	Conflicting Policies	9	
PA	RT	I FORMATION		
1 11	.1(1	** *		
2	AG	REEMENT: OBJECTIVE OR SUBJECTIVE?	17	
	1.	Introduction	17	
	2.	The Objective Theory Illustrated	20	
	3.	The 'Snapping Up' Cases	30	
	4.	The Role of Fault	33	
3	OF	FFER AND ACCEPTANCE	42	
	1.	Introduction	42	
		(a) General Application	44	
		(b) The Intention of the Parties	48	
		(c) The Inter-Related Nature of the Rules	49	
		(d) The Time at which the Contract was Created	49	
		(e) Offer and Acceptance and the 'Will Theory' of Contract	50	
	2.	Has an Offer Been Made?	52	
		(a) Advertisements	54	
		(b) Displays of Goods for Sale in a Shop	61	
		(c) Tenders	67	
		(d) Auction Sales	74	

	3.	What Constitutes an Acceptance?	78
		(a) Must the Acceptance Coincide Exactly with the Terms of the Offer?	79
		(b) Must the Acceptance be Communicated to the Offeror?	95
		(c) Prescribed Method of Acceptance	99
		(d) Can Silence Amount to Acceptance?	100
		(e) The Postal Rule	104
		(f) Acceptance in Unilateral Contracts	112
		(g) Acceptance in Ignorance of an Offer	113
	4.	Has the Offer Been Withdrawn or Otherwise Terminated?	114
	5.	Conclusion	121
4	UN	NCERTAIN AND INCOMPLETE AGREEMENTS	122
	1.	Introduction	123
	2.	Cases in Which it Has Been Held that the Agreement is too Vague or Uncertain to be Enforced	131
	3.	Cases in Which the Courts Have Held the Agreement to be Valid and Binding	134
		(a) Make Use of the Criteria or Machinery that Has Been Agreed by the Parties in Order to Resolve the Uncertainty or to Clarify the Word or Phrase that is Expressed in Vague Terms	134
		(b) The Intervention of Statute	139
		(c) Severance	139
		(d) Implication of Terms	140
	4.	Conclusion	141
5	CC	ONSIDERATION AND PROMISSORY ESTOPPEL	143
	1.	Introduction	144
	2.	Consideration: Its Scope	145
		(a) Consideration Must be Sufficient	146
		(b) The Pre-Existing Duty Rule	156
		(c) Past Consideration	198
		(d) Consideration Must Move from the Promisee	207
		(e) Establishing the Necessary Link	207
	3.	Estoppel: Its Scope	212
		(a) Estoppel: A Brief Definition	213
		(b) Two Leading Cases	214
		(c) The Ingredients of Promissory Estoppel	219
		(d) The Different Types of Estoppel	223
		(e) Unifying the Estoppels	225
		(f) Locating Estoppels	240
	4	The Future of Consideration	245

		CONTENTS	xv
6	FO	RMALITIES	255
	1.	Introduction	255
		The Reasons for Formal Requirements	257
	2.		259
	3.	Formal Requirements in English Contract Law (a) Formal Requirements Which are Sufficient to Render the Promise Binding	259
		(b) Formal Requirements Which are Necessary in Order to Render a Contract Binding	261
	4.	The Future of Formal Requirements	267
7	IN	TENTION TO CREATE LEGAL RELATIONS	269
	1.	Introduction	269
	2.	Domestic Agreements	270
		(a) The Scope of the Presumption	274
		(b) Rebutting the Presumption	276
		(c) The Rationale Behind the Presumption	278
		(d) The Relationship with Consideration	279
	3.	Social Agreements	280
	4.	Commercial Agreements	283
		(a) Rebuttal of the Presumption	285
		(b) Did the Parties Intend to Contract?	286
	5.	The Future of the Doctrine of Intention to Create Legal Relations	287
PA		'II TERMS	
8	TH	HE TERMS OF THE CONTRACT	293
	1.	Introduction	294
	2.	Two Preliminary Issues	295
	3.	Terms and Representations	295
		(a) Three Illustrative Cases	297
		(b) Drawing the Threads Together	306
	4.	The Parol Evidence Rule	307
9	IN	NCORPORATION OF TERMS	313
	1.	Introduction	314
	2.	Incorporation by Signature	314
	3.	Incorporation by Notice	322
	4.	- 1 0 CD 11 11 C	331

10	IM	IPLIED TERMS	338
	1.	Introduction	339
	2.	Terms Implied by Statute	339
	3.	Terms Implied from Usage or Custom	344
	4.	Terms Implied by the Courts	347
	1.	(a) Terms Implied in Fact	347
		(b) Terms Implied in Law	356
	5.	Conclusion	369
11	TH	HE INTERPRETATION OF CONTRACTS	373
	1.	Introduction	374
	2.	The Evolution from Literalism	374
	3.	Re-Statements of the Applicable Principles	376
	4.	The Scope of the Applicable Principles (a) The Importance of Principles	381 381
		(b) The Objective Nature of the Test	382
		(c) The 'Factual Matrix'	382
		(d) The Exclusionary Rules	383
		(e) The Iterative Nature of the Process	385
		(f) Something Has Gone Wrong with the Language	385
12	ВС	DILERPLATE CLAUSES	390
	1.	Introduction	390
	2.	Boilerplate Clauses and Standard Terms	391
	3.	Boilerplate Clauses: Some Illustrations	396
		(a) General Clause	396
		(b) Retention of Title Clauses	396
		(c) Price Escalation Clauses	397
		(d) Interest	398
		(e) Force Majeure Clauses	398
		(f) Choice of Law Clauses	400
		(g) Arbitration Clauses	401
		(h) Jurisdiction Clauses	402
	, E	(i) Hardship Clauses	403
		(j) Entire Agreement Clauses	404
		(k) Termination Clauses	405
		(l) Assignment	405
		(m) Exclusion and Limitation Clauses	405

			CONTENTS xvii
13	EX	CLUSION CLAUSES	406
	1.	Introduction	407
	2.	Interpretation	409
		(a) Excluding Liability in Negligence	412
		(b) Fundamental Breach	414
		(c) Limitation Clauses	416
		(d) Indirect or Consequential Loss	417
	3.	The Unfair Contract Terms Act 1977	418
	4.	Two Illustrative Cases	440
	5.	Conclusion: Defence or Definition?	450
14	UN	FAIR TERMS IN CONSUMER CONTRACTS	454
	1.	Introduction	455
	2.	Part 2 of the Consumer Rights Act 2015	456
	3.	Enforcement	477
15	GC	OOD FAITH	482
	1.	Introduction	482
	2.	Walford v. Miles	484
	3.	Good Faith: The Negative View	490
	4.	Good Faith: The Neutral View	492
	5.	Good Faith: The Positive View	494
			498
	6.	Good Faith in the Performance of a Contract?	420
PA	RT	'III SETTING THE CONTRACT ASIDE	
			509
16	M.	ISTAKE	309
	1.	Introduction	510
	2.	Mistake: The Difficulties	511
	3.	Mistakes and Formation	513
		(a) Knowledge of a Mistake as to the Terms of the C	Contract 513
		(b) Latent Ambiguity	514
		(c) Mistake as to Identity	515
	4.	Common Mistake	529
	5.	Mistake in Equity	545

xviii | CONTENTS

6. Reform?

	7.	Rectification	554		
	8.	Non Est Factum	560		
17	M	ISREPRESENTATION	566		
	1.	Introduction	567		
	2.	What is a Misrepresentation?	568		
		(a) Statements of Opinion	571		
		(b) Statements of Intention and Inducement	574		
		(c) Statements Made by Conduct	576		
	3.	Duty of Disclosure	580		
	4.	Rescission	585		
		(a) What is Rescission and When is it Available?	585		
		(b) Loss of the Right to Rescind	591		
	5.	Damages	596		
		(a) Section 2(1) of the Misrepresentation Act 1967	596		
		(b) Common Law Negligence	606		
		(c) Deceit	606		
		(d) Section 2(2) of the Misrepresentation Act 1967	608		
		(e) Rescission and an 'Indemnity'	611		
	6.	Exclusion of Liability for Misrepresentation	612		
18	DU	URESS	615		
	1.	Introduction	616		
	2.	Duress of the Person	617		
	3.	Duress of Goods	622		
	4.	Economic Duress	624		
	5.	Conclusion	638		
		(a) Lack of Consent	638		
		(b) Illegitimacy	643		
19	UNDUE INFLUENCE				
			645		
	1.	Introduction	646		
	2.	Three-Party Cases	649		
	3.	Two Leading Cases	650		
	4.	The Post-Etridge Cases	665		

552

20	UN	CONSCIONABILITY AND INEQUALITY OF BARGAINING POWER	672
	1.	Introduction	672
	2.	Unfairness in the Cases	674
oni	3.	The Role of Statutes	678
	4.	A General Principle?	679
010	5.	The Search for Coherence	681
21	FR	USTRATION AND FORCE MAJEURE	690
	1.	Introduction	691
	2.	Construction of the Contract	701
	3.	Foreseeable Events	703
	4.	Self-Induced Frustration	706
	5.	Frustrating Events	713
		(a) Impossibility	713
		(b) Illegality	713
		(c) Frustration of Purpose	714
	6.	The Effects of Frustration	720
	7.	The Basis of Frustration	734
PA	RT	IV REMEDIES FOR BREACH	
		THE STATE OF THE S	745
22	BR	REACH OF CONTRACT AND TERMINATION	743
	1.	Introduction	746
	2.	What is a Breach of Contract?	746
	3.	The Existence of a Right to Terminate	749
		(a) Breach of a Condition	750
		(b) Breach of a Warranty	765
		(c) Breach of an Intermediate Term	766
		(d) Making the Choice	772
		(e) Termination Clauses	776
		(f) The Relevance of Good Faith	780
		(g) Some Comparative Reflections	782
	4.	Election	784
	5.	Loss of the Right to Terminate	785
	6.	Anticipatory Breach	787

23	D.	AMAGES	79
	1.	Introduction	80
	2.	Damages: The Different Measures	800
	3.	The Performance Interest	810
	4.	The Reliance Interest	833
	5.	The Restitution Interest	840
	6.	Non-Pecuniary Losses	842
	7.	The Date of Assessment	853
•	8.	Limiting the Protection of the Performance Interest	855
		(a) Remoteness	855
		(b) Mitigation	880
		(c) Contributory Negligence	883
	9.	Account of Profits	888
	10.	Punitive Damages	898
	11.	Agreed Damages Clauses	899
	12.	Deposits and Part Payments	906
24	SP	ECIFIC PERFORMANCE	912
	1.	What is Specific Performance?	912
	2.	Specific Performance and the Adequacy of Damages	913
	3.	The Range of Factors to Which the Courts Will Have Regard	916
		(a) Personal Service Contracts	917
		(b) Mutuality	919
		(c) Undue Hardship	920
	4.	Co-operative Insurance Society Ltd v. Argyll Stores (Holdings) Ltd	922
	5.	Injunctions	933
	6.	Future Directions	934
PA	RT	V THIRD PARTY RIGHTS	
25	TH	IIRD PARTIES	941
	1.	Introduction	942
	2.	Contract Structures	943
	3.	Third Parties and the Acquisition of Contractual Rights	945
		(a) The General Rule at Common Law: Third Parties Have No Right	
		of Action	946

		CONTR	INTS	xxi	
		(b) The Rights of the Promisee		952	
		(c) The Exceptions to Privity		970	
		(d) Third Parties, Exclusion Clauses, and Exclusive Jurisdiction Clause	es	980	
		(e) The Case for Reform		994	
		(f) Contracts (Rights of Third Parties) Act 1999		1001	
	4.	Third Parties and the Imposition of Liabilities		1018	
	5.	Conclusion		1022	
On	line	Resources: Additional Chapters		1025	5
		rapacity		1025	
		gality		1025	
Inc	lex			1027	