## **Detailed contents**

Pre	Preface	
Ac	Acknowledgements Table of cases Table of statutes	
Ta		
Ta	ble of statutory instruments	xlv
1	Guidance on reading cases	1
	SECTION 1 A guiding principle	1
	SECTION 2 Useful notes	1
	SECTION 3 The basics of reading a case	1
	A) Decide which case(s) to read	1
	B) Use the citation to find the report of the case	2
	C) Note the full case name and court	2
	D) Consider the presentation of case reports	2
	SECTION 4 Reading a case in practice	4
	A) Catchwords	4
	B) Facts	4
	C) Decision	4
	D) Note the facts	5
	E) Decision at first instance	5
	F) Decision of the Court of Appeal	5
	G) Judgments	6
	H) Notes on the decision and the judgments	12
	I) General notes on the legal principles in the case	13
	SECTION 5 Exercise	15
2	Agreement	17
_	Agreement	
	SECTION 1 Subjectivity versus objectivity	17
	A) Objectivity prevails	17
	B) Subjectivity has some relevance	17
	SECTION 2 The criteria to determine agreement	18
	SECTION 3 Offer distinguished from invitation to treat	21
	A) Advertisements	23
	B) Display of goods	24
	C) Tenders	27
	D) Auction sales	31

-	SECTION 4 Acceptance	34
	A) The mirror image rule	34
	B) Offeror prescribes the method of acceptance	40
	C) Acceptance must be made in response to the offer	41
	D) Communication of the acceptance to the offeror	42
		55
	SECTION 5 Revocation of an offer	
	A) Communication of the revocation	56 58
	B) Revocation of a unilateral offer	63
	C) Communication of revocation of unilateral offers	
3	Agreement problems	65
	SECTION 1 Certainty	65
	A) Vagueness	65
	B) Severing a meaningless clause	68
	C) Incompleteness	69
	D) Conclusion of 'no contract' and payment for performance	78
	SECTION 2 Agreement mistakes	84
	A) Mutual mistake	85
	B) Unilateral mistake	87
	C) Unilateral mistake as to identity	91
	SECTION 3 Document mistakes	111
	A) Rectification	111
	B) The plea of non est factum	120
4	Enforceability of promises: Consideration and promissory estoppel	123
	SECTION 1 Consideration	123
	A) What is consideration?	123
	B) Consideration distinguished from a condition imposed on recipients of gifts	123
	C) Consideration must be sufficient, but need not be adequate	125
		145
	D) Part payment of a debt	
	SECTION 2 Promissory estoppel	152
	A) Origins of the doctrine	153
	B) When will the doctrine operate and in what way?	155
	C) How far can the doctrine be extended?	165
5	Intention to be legally bound and capacity to contract	173
	SECTION 1 Intention to be legally bound	173
	A) Domestic and social agreements	173
	B) Commercial agreements	177
	C) A different approach?	187
	SECTION 2 Capacity to contract: Minors' contracts	192
	A) Contracts for necessaries	192
	B) Beneficial contracts of service	193
	C) Contracts involving continuing obligations and the ability to repudiate	
	during minority	194
	D) Restitution by the minor	195

6	Content of the contract and principles of interpretation	196
	SECTION 1 Pre-contractual statements: Terms or mere representations?	196
	A) Accepting responsibility or advising on verification	196
	B) Importance attached test	198
	C) Special knowledge of the statement maker	199
	SECTION 2 Written contracts	204
	A) The parol evidence rule	205
	B) The effect of signature	210
	SECTION 3 Oral contracts: Incorporation of written terms	214
	A) Reasonable notice	214
	<ul><li>B) Course of dealing</li><li>C) Common understanding of the parties</li></ul>	224 226
	SECTION 4 Implied terms	228
	<ul><li>A) Terms implied at common law by the courts</li><li>B) Terms implied by statute</li></ul>	228 242
	SECTION 5 Interpretation	244
	A) West Bromwich: Contextual interpretation in accordance with principles of commercial common sense	244
	B) Admissibility of pre-contractual negotiations	246
	C) Language having more than one potential meaning	252
7	Exemption clauses and unfair contract terms	256
	SECTION 1 The general approach to exemption clauses	256
-	SECTION 2 Requirements that must be satisfied before an exemption	
	clause can be relied upon	257
	SECTION 3 Construction: On its natural and ordinary meaning,	
	the clause covered what happened	257
Ì	A) Contra proferentem	258
	B) Liability for negligence	259
	C) Limitation clauses	267
	D) Inconsistent terms	268
	E) Fundamental breach	269
	SECTION 4 Clause not rendered unenforceable by the Unfair Contract Terms Act 1977	274
	A) Scope of UCTA 1977	274
	B) Basic scheme of UCTA 1977	281
	C) Negligence liability (s. 2)	281
	D) Contractual liability	282
	E) The reasonableness requirement	288
	SECTION 5 Clause not rendered unenforceable by the Unfair	
	Terms in Consumer Contracts Regulations 1999	303
	A) Background, scope, and main provisions of the Regulations	303
	B) Case law explaining the operation of the Unfair Terms in Consumer Contracts Regulations	307

8	Breach of contract	320
	SECTION 1 Absolute and qualified contractual obligations	320
	SECTION 2 Consequences of breach	321
	A) Termination for repudiatory breach	322
	B) The meaning of 'termination'	324
	C) Affirmation	324
	SECTION 3 Identifying repudiatory breach and the classification of terms	327
	A) Is the term a condition?	327
	B) More flexibility at a price: Innominate or intermediate terms	336
	C) The time of the test for repudiatory breach	343
	SECTION 4 Entire obligations	345
	A) Avoiding the 'entire obligation rule'	346
	SECTION 5 Anticipatory breach	350
	A) What will constitute renunciation?	350
	B) The election	352
	C) Affirmation	353 368
	D) Termination	308
9	Damages for breach of contract	371
	SECTION 1 The aim of contractual damages	371
	SECTION 2 Expectation loss	372
	A) Measurement: Difference in value	372
	B) Measurement: Cost of cure	373
	SECTION 3 Wasted expenditure	379
	A) Where expectation of profit is too speculative	380
	B) Limitation on recovery of wasted expenditure damages	382
	C) Burden of proof in wasted expenditure claims	388
	SECTION 4 Time for assessment of loss and compensatory damages	391
	SECTION 5 Causation and contributory negligence	401
	A) Causation	401
	B) Contributory negligence	402
	SECTION 6 Remoteness of damage	404
	A) Normal and abnormal loss	406
	B) A new approach to remoteness in contract?	412
	SECTION 7 Mitigation	423
	A) Reasonable steps	423
	B) What if the reasonable steps increase the loss?	424
	SECTION 8 Non-pecuniary loss	425
	A) Damages for disappointment and distress	425
	B) Damages for loss of reputation	441
	SECTION 9 Agreed damages clauses	443
	A) Liquidated damages and penalty clauses	443

10	Remedies providing for specific relief and restitutionary remedies	460
	SECTION 1 Claiming an agreed sum	460
	SECTION 2 Specific performance and injunctions	460
	A) If damages are an adequate remedy, specific performance is not available	461
	<ul><li>B) Supervision</li><li>C) Contracts for personal services</li></ul>	461 465
	SECTION 3 Restitutionary remedies	467
	A) Enrichment by subtraction	467
	B) The account of profits and Wrotham Park damages	469
11	Privity of contract and third party rights	485
	${\tt SECTION 1: Origins \ of \ the \ privity \ doctrine \ and \ its \ relationship \ with \ consideration}$	485
	SECTION 2 Reform of the privity doctrine and the Contracts (Rights of Third Parties) Act 1999	487
	A) Case law interpretation of the Contracts (Rights of Third Parties) Act 1999,	400
	s. 1(1)(b) and (2) B) Section 1(3)	489 494
	SECTION 3 Agency	495
	A) Can a third party rely on the protection of an exemption clause?	496
	B) The technicalities	498
	SECTION 4 The collateral contract	503
	SECTION 5 Trusts of contractual obligations	504
	SECTION 6 Action by the contracting party as a means of avoiding privity	505
	<ul><li>A) Specific performance</li><li>B) Promisee's action for damages</li></ul>	506 508
	SECTION 7 Privity and burdens	530
	A) Exemption clauses and bailment	530
	B) Restrictions on the use of chattels	533
12	Discharge by frustration: Subsequent impossibility	537
	SECTION 1 The frustration doctrine: Discharge for subsequent impossibility	537
	SECTION 2 The contractual allocation of risk	537
	<ul><li>A) Assuming the risk</li><li>B) Event occurs as a result of the fault of one of the parties</li></ul>	537
	SECTION 3 The theoretical basis for the doctrine of frustration	537 <b>541</b>
	A) The implied term theory	541
	B) The construction theory and events foreseen	542
	SECTION 4 Frustrating events	545
	A) Impossibility B) Supervening illegality	546
	C) Frustration of the common purpose of the parties	551 551
	SECTION 5 The effects of frustration	555
	A) At common law	556
	B) The Law Reform (Frustrated Contracts) Act 1943	557

13	Common mistake: Initial impossibility	566
	SECTION 1 The contractual allocation of risk	566
	A) Express allocation of the risk	566
	R) Implied allocation of risk	568
	C) Event occurs as a result of the fault of one of the parties	569
	SECTION 2 The theoretical basis for the doctrine of common mistake	570
	A) The implied term theory	570
	B) The construction theory	572
	SECTION3 Categories of fundamental common mistake	574
	A) Res extincta	574
	B) Mistakes as to quality	575
	SECTION 4 The relationship between common mistake and frustration	594
14	Misrepresentation	597
	SECTION 1 Actionable misrepresentation	597
	A) Unambiguous false statement	597
	B) Of fact	601
	C) Induces the other party to contract	605
	SECTION 2 The remedy of rescission	607
	A) Limits to the right to rescind	607
	SECTION 3 Types of misrepresentation and damages	617
	A) Fraudulent misrepresentation: The tort of deceit	618
	B) Negligent misrepresentation	637
	C) Section 2(2) of the Misrepresentation Act 1967: Damages in lieu of rescission	649
	SECTION 4 Excluding liability for non-fraudulent misrepresentation	656
	A) Excluding liability for fraud	657
	B) The crucial question: When does s. 3 apply?	657
	C) Entire agreement clauses purporting to cover misrepresentation	659
15	Duress, undue influence, and unconscionability	669
	SECTION 1 Duress	671
	A) Duress to the person	671
	B) Duress to property	672
	C) Economic duress	673
	SECTION 2 Undue influence	686
	A) Types of undue influence	686
	B) Actual undue influence	695 697
	<ul><li>C) Presumed (or evidential) undue influence: Protected relationships</li><li>D) Presumed (or evidential) undue influence: Other cases established on the facts</li></ul>	698
	E) Undue influence exercised by a third party	705
	F) The effect of undue influence	721
	SECTION 3 Unconscionability	723
	A) Protection for the 'poor and ignorant'	723
	B) The relationship between undue influence and unconscionability	725

16	Illegality	730
	SECTION 1 Illegal contracts	730
	A) Contracts prohibited by statute	733
	B) Contracts that are illegal in their performance	736
	SECTION 2 Contracts void on grounds of public policy: Contracts	
-	in restraint of trade	743
	A) Basic principles	743
	B) Covenants between employer and employee	744
	C) Exclusive dealing agreements	747
	D) Exclusive service agreements	750
	E) Severance of the objectionable parts of covenants	752
	SECTION 3 Money or property transferred under an illegal contract	754
	A) General rule: Not recoverable	754
	B) Recovery if not in pari delicto	754
	C) Repentance before partial performance	754
	D) Recovery if no reliance on the illegal contract	755
	E) The presumption of advancement	759
	F) The Law Commission and reform	766
т. 1		
Inde	2X	769