CONTENTS

Preface: Answering the Great Questions of Contract Law Acknowledgments	xvii xxi
ENFORCING PRIVATE AGREEMENTS	1
How Should Damages for Breach of Contract Be Measured?	3
THE RELIANCE INTEREST IN CONTRACT DAMAGES Lon L. Fuller and William R. Perdue, Jr.	5
THE PHANTOM RELIANCE INTEREST IN CONTRACT DAMAGES Michael B. Kelly	22
BEYOND FULLER AND PERDUE? Richard Craswell	37

ARE SOME BREACHES OF	
CONTRACT EFFICIENT?	47
FUNDAMENTAL PRINCIPLES OF CONTRACT DAMAGES Richard A. Posner	48
THE EFFICIENT BREACH FALLACY Daniel Friedmann	52
A UTILITARIAN CRITIQUE OF WEALTH MAXIMIZATION THEORY Marco J. Jimenez	59
How Should Default Rules Be Chosen?	71
FILLING GAPS IN INCOMPLETE CONTRACTS Ian Ayres and Robert Gertner	74
THE SOUND OF SILENCE: DEFAULT RULES AND CONTRACTUAL CONSENT Randy E. Barnett	83
WHEN SHOULD COURTS ORDER SPECIFIC PERFORMANCE? 4	93
SPECIFIC PERFORMANCE Richard A. Posner	94
THE CASE FOR SPECIFIC PERFORMANCE Alan Schwartz	96

140

"MEANING" IN THE LAW OF

CONTRACTS

E. Allan Farnsworth

SHOULD FORM CONTRACTS BE ENFORCED?	153
CONTRACTS OF ADHESION: AN ESSAY IN RECONSTRUCTION Todd D. Rakoff	154
CONSENTING TO FORM CONTRACTS Randy E. Barnett	171
ENFORCEABILITY	185
WHICH COMMITMENTS SHOULD BE ENFORCED?	187
A. SIX REASONS FOR ENFORCING PROMISES	188
THE BASIS OF CONTRACT Morris R. Cohen	188
B. Contract as Promise	200
THE DIVERGENCE OF CONTRACT AND PROMISE Seana Valentine Shiffrin	200
THE CONVERGENCE OF CONTRACT AND PROMISE Charles Fried	212

Contents	Xiii
CONTRACT VERSUS PROMISE Aditi Bagchi	217
DOES THE DOCTRINE OF CONSIDERATION HAVE A FUNCTION?	227
CONSIDERATION AND FORM Lon L. Fuller	229
THE IDEOLOGICAL SUBTEXT OF "CONSIDERATION AND FORM" Duncan Kennedy	250
CONSIDERATION AND CONTEXTUAL FORMALISM Curtis Bridgeman	259
SHOULD THE "INTENTION TO CREATE LEGAL RELATIONS" BE A CRITERION OF ENFORCEABILITY?	273
A CONSENT THEORY OF CONTRACT Randy E. Barnett	275
THE REGULATORY ROLE OF CONTRACT LAW Jean Braucher	287
WHEN ONLY A FORMAL CONTRACT WILL DO Patricia J. Williams	299
INTENTION TO CREATE LEGAL RELATIONS Dori Kimel	301

What Role Should Formal Contracts Play in Contract Law?	307
WHY NOMINAL CONSIDERATION SHOULD BE BINDING Joseph Siprut	308
INTENT TO CONTRACT Gregory Klass	317
How Does Promissory Estoppel Fit Within the Structure of Contract Law?	331
THE PROMISSORY BASIS OF SECTION 90 Edward Yorio and Steve Thel	333
THE FOUR EVOLUTIONARY STAGES OF PROMISSORY ESTOPPEL Eric Mills Holmes	348
PERFORMANCE AND BREACH IV	361
WHAT CONSTITUTES GOOD FAITH PERFORMANCE? 14	363
BREACH OF CONTRACT AND THE COMMON LAW DUTY TO PERFORM IN GOOD FAITH Steven J. Burton	364
THE GENERAL DUTY OF GOOD FAITH—ITS RECOGNITION AND CONCEPTUALIZATION Robert S. Summers	375

WHEN IS A BREACH MATERIAL? 15	383
A NEW LOOK AT MATERIAL BREACH IN THE LAW OF CONTRACTS Eric G. Andersen	384
DEFENSES TO CONTRACTUAL V OBLIGATION	399
WHEN SHOULD A COURT REFUSE TO ENFORCE A CONTRACT?	401
A. Duress, Undue Influence, and Unconscionability	402
UNCONSCIONABILITY: A CRITICAL REAPPRAISAL Richard A. Epstein	403
THE BARGAIN PRINCIPLE AND ITS LIMITS Melvin Aron Eisenberg	414
B. MUTUAL MISTAKE	428
MUTUAL MISTAKE: CONSIDERATION REINCARNATE Val D. Ricks	428
MISTAKE IN CONTRACT LAW Melvin A. Eisenberg	435

C. Unilateral Mistake and the Duty to Disclose	445
MISTAKE, DISCLOSURE, INFORMATION, AND THE LAW OF CONTRACTS Anthony T. Kronman	445
SHOULD COURTS ADJUST CONTRACT TERMS TO HANDLE CHANGED CIRCUMSTANCES?	455
COURT ADJUSTMENT OF LONG-TERM CONTRACTS Robert A. Hillman	456
RELATION-PRESERVING VS. END-GAME NORMS Lisa Bernstein	468
THE CASE FOR FORMALISM IN RELATIONAL CONTRACT Robert E. Scott	473
WHAT IS THE RELATIONAL THEORY OF CONTRACT? 18	481
RELATIONAL CONTRACT THEORY IN CONTEXT Jay M. Feinman	483
WHY THERE IS NO LAW OF RELATIONAL CONTRACTS Melvin A. Eisenberg	493
RELATIONAL CONTRACT THEORY: A SYMPATHETIC RECONSTRUCTION Ethan Leib	508
REFLECTIONS ON THE RELATIONAL MODEL Dori Kimel	519