

TABLE OF CONTENTS

	PAGE
<i>Preface</i>	iii
<i>Preface to the First Edition</i>	v
<i>Table of Cases</i>	TC-1
<i>Table of Statutes</i>	TS-1
	PARA.
PART I. INTRODUCTION	1-17
CHAPTER 1. INTRODUCTION	1
PART II. ENFORCEABILITY.....	18-258
CHAPTER 2. BARGAINS	18
A. Introduction.....	18
B. Mutual Assent: Offer and Acceptance.....	25
C. Preliminary Negotiations.....	27
1. Price quotations	31
2. Auctions	32
3. Invitations for tenders.....	36
4. Open terms and incomplete agreements.....	42
5. Consent of third party	56
6. Quasi-criminal cases.....	57
7. Indefiniteness	58
8. Counter-offers and additional terms.....	60
D. Unincorporated Associations.....	61
E. Unsigned Writings.....	62
1. The ticket cases.....	66
2. The exchange of forms by correspondence	69
3. Criticisms of the existing law.....	77
4. Uniform Commercial Code, section 2-207	80
F. Misunderstandings.....	90
G. Communication of Acceptance	92

LAW OF CONTRACTS

	PARA.
H. Problems of Correspondence	99
1. Introduction.....	99
2. Delay in transmission of the offer	100
3. Attempted revocation by offeror	101
4. Loss or delay	105
5. Overtaking communications.....	106
6. Jurisdictional problems	108
7. Instantaneous communications.....	110
8. Other communications	112
I. Termination of Power of Acceptance	113
1. Lapse.....	113
2. Revocation.....	114
3. Rejection	115
4. Death	116
J. The Exchange Element: Consideration	118
1. Value exchanged	118
2. Mutuality of promises.....	124
3. Charitable subscriptions.....	126
4. Firm offers.....	127
5. Compromises	129
6. Pre-existing duty	133
CHAPTER 3. INTENTION	141
A. The Objective Principle of Contract Formation.....	141
B. Implied Terms.....	149
C. Intention to Create Legal Relations	151
1. Promises binding in honour only.....	152
2. Comfort letters	153
3. Social engagements and jests.....	154
4. Family agreements	155
5. Government contracts.....	156
6. Business promotions and lotteries	158
7. Non-justiciable agreements.....	159
CHAPTER 4. UNILATERAL CONTRACTS	161
CHAPTER 5. NON-BARGAIN PROMISES	170
A. Sealed Contracts	171
B. Nominal Consideration.....	178
C. Past Consideration	182
D. Subsequent Reliance	192
1. Introduction.....	192
2. Promises to give interests in land	195
3. Gratuitous undertakings negligently prosecuted....	197

TABLE OF CONTENTS

	PARA.
4. Estoppel and waiver.....	198
5. Negligent misstatement in tort	210
6. Related problems	213
CHAPTER 6. STATUTE OF FRAUDS	220
A. The Purpose of the Statute.....	220
B. Interpretation of the Statute.....	230
1. Guarantees.....	231
2. Contracts not to be performed in a year	234
3. The memorandum in writing: form and contents	235
C. Part Performance	241
D. Restitution	248
E. Rectification	250
F. Trusts.....	251
G. Variation and Estoppel	252
H. Future Developments.....	254
PART III. CONTRACTS AND THIRD PARTIES	259-317
CHAPTER 7. AGENCY	259
CHAPTER 8. ASSIGNMENT	273
CHAPTER 9. THIRD PARTY BENEFICIARIES	285
CHAPTER 10. MISTAKE AND THIRD PARTIES	302
A. Mistake of Identity.....	302
B. Documents Mistakenly Signed.....	310
PART IV. EXCUSES FOR NON-PERFORMANCE	318-643
CHAPTER 11. MISTAKE AS TO CONTRACTUAL TERMS	318
A. Introduction.....	318
B. Written Documents	321
1. Introduction.....	321
2. Parol Evidence Rule.....	323
3. Merger.....	330
4. Subsequent events	332
5. Authority of agents.....	333
6. Interpretation.....	334
7. Rectification	339
8. Misrepresentations and collateral statements	347
9. Inequality of bargaining power	350

LAW OF CONTRACTS

PARA.

10. Agreement to verbal formula	353
11. Alteration of documents.....	354
CHAPTER 12. MISTAKE IN ASSUMPTIONS	355
A. Introduction.....	355
B. Unexpected Changes in Future Events:	
Impossibility and Frustration	365
1. Mistake and frustration	365
2. The basis of relief	367
3. Availability of relief	369
4. Allocation of risk.....	378
5. Partial relief.....	383
C. Mistake as to Existing Facts	386
1. Availability of relief	386
2. Mistake of law.....	395
3. Allocation of risk.....	397
4. Mutual mistake.....	398
5. Mistake in offers.....	401
D. Restitution and Reliance.....	403
CHAPTER 13. MISREPRESENTATIONS.....	406
A. Mistake and Warranty.....	406
B. Misrepresentation and Promise.....	417
C. Fraudulent Misrepresentation.....	421
D. Innocent Misrepresentation	423
E. Negligent Misstatements	432
F. Collateral Contracts.....	434
G. Silence, Misrepresentation and Good Faith	437
CHAPTER 14. GOOD FAITH, FAIRNESS AND UNCONSCIONABILITY.....	444
A. Introduction.....	444
B. Forfeitures	450
C. Penalties	456
D. Deposits	470
E. Clauses Limiting Liability	475
1. Introduction.....	475
2. Judicial control	479
3. Legislative control.....	494
(a) United Kingdom.....	494
(b) Canadian provincial legislation	496
F. Incorporation of Documents	497
G. Documents and Consent	498
H. Interpretation, Implied Terms and Good Faith.....	500

TABLE OF CONTENTS

	PARA.
I. Duress.....	515
J. Inequality of Bargaining Power	521
1. Expectant heirs	522
2. Protection of weaker parties.....	524
3. Undue influence	525
4. Fiduciary relationships.....	529
K. Withholding Discretionary Remedies	532
1. Damages.....	532
2. Specific enforcement	533
3. Costs	536
L. Consideration.....	538
M. Restraint of Trade.....	541
N. Legislation	542
O. A General Principle	549
1. Criteria of relief	552
2. Bars to relief.....	557
3. Remedies	558
CHAPTER 15. PUBLIC POLICY.....	562
A. Introduction.....	562
B. Common Law Illegality	569
C. Statutory Illegality.....	577
D. Restitution of Benefits Transferred	583
E. Severance.....	586
CHAPTER 16. NON-PERFORMANCE AND BREACH	587
A. What Amounts to Performance	587
B. Termination for Breach.....	589
1. Substantial non-performance.....	589
2. Conditions and warranties	594
3. Time problems.....	601
4. Duty to warn before terminating.....	604
5. Recovery of benefits transferred.....	605
(a) Recovery by the party not in breach	605
(b) Recovery by the party in breach	609
(c) Restitution.....	611
6. Waiver of conditions.....	612
(a) When waiver possible.....	612
(b) Retraction of waiver	616
C. Anticipatory Repudiation.....	622

PART V. CAPACITY	644-668
CHAPTER 17. GOVERNMENT CONTRACTS	644
A. The Crown	645
1. Petition of right	645
2. Administrative approval.....	646
3. Legislative and executive role of Crown	647
4. Parliamentary appropriation of funds	649
5. Agency.....	650
6. Executive discretion	652
7. Estoppel.....	653
B. Municipalities	654
CHAPTER 18. MINORS	655
CHAPTER 19. MENTAL INCOMPETENCE	662
PART VI. REMEDIES.....	669-777
CHAPTER 20. SPECIFIC ENFORCEMENT.....	669
A. Introduction.....	669
B. Specific Performance.....	672
1. Adequacy of money award.....	672
2. Mutuality.....	682
3. Necessity of supervision	685
4. Sale of goods and shares.....	686
5. Personal services	687
C. Injunctions.....	689
D. Specific Enforcement Combined with Money Award.....	690
E. Discretionary Defences	694
F. Impossibility	699
G. Contractual Control over Specific Remedies	700
H. Future Development.....	701
CHAPTER 21. DAMAGES	703
A. Introduction.....	703
B. Date for Assessment of Damages.....	705
C. Obligations in Foreign Currency.....	711
D. Reliance Measure	717
E. Vendor's Failure to Make Title to Land.....	721
F. Restitution	724
G. Double Compensation	733
H. Uncertainty.....	736

TABLE OF CONTENTS

	PARA.
I. Remoteness.....	739
J. Punitive Damages.....	748
K. Intangible Injuries	750
L. Avoidable Loss	758
M. Contributory Negligence	774
N. Contribution Among Wrongdoers	777
	PAGE
<i>Index</i>	IN-1