Index

ABSOLUTE POLLUTION EXCLUSION

Interpretation of contract, § 8.7

ACCEPTANCE

Offer and Acceptance, this index

ACCORD AND SATISFACTION

Discharge from contract, §§ 11.11-11.15

ACTIONS

Remedies, this index

ACTUAL CONTROVERSY

Equitable relief, § 10.38

ACTUAL DAMAGES

Damages for breach of contract, § 10.8

AGENTS AND AGENCY

Statute of frauds and writing requirement, § 4.15

AGREED DAMAGES

Damages for breach of contract, §§ 10.21, 10.22

ALIENATION, RESTRAINTS ON

Illegality, §§ 3.24-3.27

ALTERATION

Modification or Change, this index

AMBIGUITY

Interpretation of contract, §§ 8.1, 8.4-8.7, 8.10

ANTICIPATORY REPUDIATION

Generally, §§ 9.1, 9.10-9.15

Acceptance by non repudiating party, § 9.12

Action for breach by non repudiating party, § 9.12

Clear and unequivocal breach, § 9.11 Damages, § 9.15

Excuses for nonperformance, § 7.15

ANTICIPATORY REPUDIATION

-Cont'd

Executory contracts, § 9.13

Incapacity, § 2.40

Installment contracts, § 9.11

Options of non repudiating party, § 9.12

Rescission by non repudiating party, § 9.12

Revocation of repudiation, § 9.14
What constitutes anticipatory breach,
§ 9.11

ARBITRATION

Generally, §§ 9.16-9.21

Contracts

Generally, §§ 9.16-9.21

Federal Arbitration Act (FAA), generally, § 9.17

Governing law, § 9.17

Public policy in favor of arbitration, § 9.16

Requirements for arbitration, generally, §§ 9.18-9.20

Scope of arbitration agreement, § 9.20

Stay of judicial proceedings, § 9.18

Substantive law governing arbitration agreements, § 9.17

Waiver of right to settle contract, § 9.16

Federal Arbitration Act (FAA), generally, § 9.17

Governing law, § 9.17

Public policy in favor of arbitration, § 9.16

Requirements for arbitration, generally, §§ 9.18-9.20

Scope of arbitration agreement, § 9.20

Stay of judicial proceedings, § 9.18
Substantive law governing arbitration agreements, § 9.17

ARBITRATION—Cont'd

Waiver of right to settle contract, § 9.16

ASSIGNMENTS

Parties Outside the Contract, this index

ASSUMPTION OF THIRD PARTY'S DEBT

Illegality, § 3.19

ATTEMPT

Contracts and agreements, release from, § 9.2

ATTORNEY-CLIENT RELATIONSHIP

Contorts, § 6.5

ATTORNEYS' FEES

Contracts and agreements, § 10.42

BREACH OF CONTRACT

Contracts and Agreements, this index

BURDEN OF PROOF

Presumptions and Burden of Proof, this index

CAPACITY

Incapacity to Contract, this index

CAPITAL INVESTMENT

Damages for breach of contract, § 10.11

CERTAINTY

Damages for breach of contract, § 10.5

CHANGE OR MODIFICATION

Modification or Change, this index

CHILDREN OR MINORS

Incapacity, this index

CHOICE OF LAW

Governing Law, this index

COERCION

Duress, Coercion, and Undue Influence, this index

COMMERCIAL CODE

Interpretation of contract, § 8.11

COMMISSIONS

Illegality, § 3.19
Statute of frauds and writing requirement, § 4.10

COMMON LAW

Fraud and misrepresentation, §§ 2.13-2.24
Illegality, § 3.13

COMMUNICATION REQUIREMENT

Offer and acceptance, § 1.4

COMPROMISE AND SETTLEMENT

Discharge from contract, §§ 11.11-11.15

CONCURRENT CONDITIONS

Excuses for nonperformance, § 7.5

CONDITIONS

Excuses for Nonperformance, this index

CONSENT OR APPROVAL

Parties outside the contract, § 5.3

CONSEQUENTIAL DAMAGES

Damages for breach of contract, § 10.8

Fraud and misrepresentation, § 2.27

CONSIDERATION

Generally, §§ 1.12-1.25
Burden of proof, § 1.20
Damages for promissory estoppel, § 1.19

Definition, § 1.13

Effect of failure of consideration, § 1.24

Exceptions to requirement of, §§ 1.15-1.21

Failure of consideration, §§ 1.22-1.25

Firm offers, § 1.16

Fraud in inducement, failure of consideration from, § 1.23

Illegal consideration, § 1.14

Illegality, § 3.23

Love and affection as consideration, § 1.14

Index-2

CONSIDERATION—Cont'd CONTORTS—Cont'd Marriage promise as consideration, Good faith, duty of, § 6.4 § 1.14 Interference, § 6.8 Modifications of contract, exceptions, Malpractice cases, § 6.5 **§ 1.21** Nature of loss, § 6.6 Moral obligation as consideration, Obligations, § 6.3 § 1.14 Overview, § 6.1 Motivation distinguished, § 1.13 Physician-patient relationship, § 6.5 Multiple promises, single Relationship of parties, § 6.5 consideration as supporting, Tortious interference, § 6.8 § 1.14 Unresolved damage issues, § 6.7 Partial failure of consideration, § 1.25 Parties outside the contract, § 5.2 CONTRACTS AND AGREEMENTS Past consideration, § 1.14 Acceptance. Offer and Acceptance, Performance as consideration, § 1.12 this index Promissory estoppel, §§ 1.17-1.19 Actions. Remedies for breach of Reliance damages for promissory contract, below estoppel, § 1.19 Anticipatory Repudiation, this index Remedies for promissory estoppel, § 1.19 Arbitration, this index Seal, effect of, § 1.20 Attempt to be released from contract Statute of frauds and writing requireas breach, § 9.2 ment, § 4.16 Attorneys' fees, § 10.42 Sufficiency, § 1.14 Breach of contract, generally, §§ 9.1-Written instruments, § 1.20 9.21 Buyer's remedies, generally, § 10.24 CONSTITUTIONALITY Change in condition of goods, revo-Illegality, § 3.15 cation of acceptance prior to, CONSTRUCTION AND § 9.7 **INTERPRETATION** Coercion, Duress, Coercion, and Interpretation of Contract, this index Undue Influence, this index Consideration, this index **CONSTRUCTIVE FRAUD** Construction. Interpretation of Generally, § 2.26 Contract, this index CONTENTS Contingency fee awards, § 10.42 Statute of frauds and writing require-Criteria, § 10.2 ment, §§ 4.13-4.16 Curing of defects by seller, §§ 9.7, CONTINGENCY FEE AWARDS 9.8 Contracts and agreements, § 10.42 Damages for Breach of Contract, this index **CONTORTS** Defenses to contract actions Generally, **§§ 6.1-6.8** Duress, Coercion, and Undue Attorney-client relationship, § 6.5 Influence, this index Conduct in performing promise, § 6.4 Fraud and Misrepresentation, this Damage issues, § 6.7 index Doctor-patient relationship, § 6.5 Illegality of Contract, this index Factors distinguishing contract and Incapacity to Contract, this index tort claims, §§ 6.2-6.6

Fraud and deceit, effect of, § 6.6

Mistake, this index

CONTRACTS AND AGREEMENTS —Cont'd

Defenses to contract actions—Cont'd Undue influence. Duress, Coercion, and Undue Influence, this index

Definition, § 9.2

Discharge from Contract, this index Duress, Coercion, and Undue Influence, this index

Election of remedies, § 10.3

Equitable Relief, this index

Excuses for Nonperformance of Contract, this index

Formation of contracts

Generally, §§ 1.1-1.25

Acceptance. Offer and Acceptance, this index

Coercion. Duress, Coercion, and Undue Influence, this index

Consideration, this index

Duress, Coercion, and Undue Influence, this index

Fraud and Misrepresentation, this index

Incapacity to Contract, this index Mistake, this index

Offer and Acceptance, this index Problems of formation, generally, §§ 2.1-2.51

Scope of chapter, § 1.1

Undue influence. Duress, Coercion, and Undue Influence, this index

Fraud and Misrepresentation, this index

Good faith rejection of goods, § 9.6 Illegality of Contract, this index Incapacity to Contract, this index

Installment contracts, § 9.9

Instructions of seller as to disposi

Instructions of seller as to disposition of goods, § 9.6

Interpretation of Contract, this index Judicial proceedings, stay of, § 9.21 Knowledge of defect by buyer, effect of, § 9.7

Material breach doctrine, §§ 9.3, 9.5-9.7

Mistake, this index

CONTRACTS AND AGREEMENTS —Cont'd

Nonconforming goods, revocation of acceptance of, § 9.7

Offer and Acceptance, this index Options of non-repudiating party, § 9.12

Ownership of seller, treating goods in manner inconsistent with, § 9.6

Parol evidence rule. Interpretation of Contract, this index

Partial breach, §§ 9.4, 9.9

Particular parties, remedies of, §§ 10.23, 10.24

Parties Outside the Contract, this index

Possession of goods, duties in relation to, § 9.6

Presumptions and Burden of Proof, this index

Problems of formation, generally, §§ 2.1-2.51

Questions of law and fact, § 9.3 Ratification of Contract, this index Reformation of Contract, this index Rejection of goods, § 9.6

Remedies for breach of contract

Generally, §§ 10.1-10.42

Attorneys' fees, § 10.42

Buyer's remedies, § 10.24

Contingency fee awards, § 10.42

Criteria, § 10.2

Damages for Breach of Contract, this index

Election of remedies, § 10.3

Equitable Relief, this index
Particular parties, remedies of,
§§ 10.23, 10.24

Seller's remedies, § 10.23

Specific Performance of Contract, this index

Rescission of Contract, this index Reselling rejected goods, § 9.6 Reshipping rejected goods, § 9.6 Revocation

Acceptance, revocation of, § 9.7 Repudiation, revocation of, § 9.14 Scope of arbitration, § 9.20 Seller's remedies, generally, § 10.23

CONTRACTS AND AGREEMENTS

—Cont'd

Severable Contracts, this index Specific Performance of Contract, this index

Statute of Frauds and Writing Requirement, this index

Stay of judicial proceedings, § 9.21 Storage of rejected goods, § 9.6

Substantial Performance of Contract, this index

Substantive law governing arbitration agreements, § 9.17

Texas Uniform Commercial Code, breach under, generally, §§ 9.5-9.9

Time or date

Rejection of goods, time for, § 9.6 Revocation of acceptance, time for, § 9.7

Total breach versus partial breach, § 9.4

Undue influence. Duress, Coercion, and Undue Influence, this index

Writing requirement. Statute of Frauds and Writing Requirement, this index

COUNTER OFFER

Offer and acceptance, § 1.9

COVENANT NOT TO SUE

Discharge from contract, § 11.21

CREDIT CONTRACTS

Parties outside the contract, § 5.5

CURING OF DEFECTS

Contracts and agreements, §§ 9.7, 9.8

DAMAGES FOR BREACH OF CONTRACT

Generally, §§ 10.4-10.22 Actual damages, § 10.8

Agreed damages, §§ 10.21, 10.22 Anticipatory breach, §§ 9.15, 10.12

Capital investment, § 10.11

Certainty, limitations on damages, § 10.5

Consequential Damages, this index Consideration, § 1.19

DAMAGES FOR BREACH OF CONTRACT—Cont'd

Contorts, § 6.7

Direct damages, § 10.8

Expectancy, §§ 10.9-10.13

Foreseeability, limitations on damages, § 10.4

Fraud and misrepresentation, §§ 2.27, 2.31

Limitations on damages, §§ 10.4-10.6

Liquidated damages, § 10.21

Lost profits, § 10.10

Mere deviation measure of damages, § 10.13

Mitigation of damages, § 10.6

Nominal damages, § 10.19

Other measurements, § 10.13

Promissory estoppel, § 10.15

Punitive Damages, this index

Quantum meruit, § 10.18 Reliance, §§ 10.14, 10.15

Restitution, §§ 10.16-10.18

Substantial performance of contract, § 10.12

Types of damages, generally, §§ 10.7-10.22

Unjust enrichment, § 10.17

DATE

Time or Date, this index

DECEIT

Fraud and Misrepresentation, this index

DECEPTIVE TRADE PRACTICES ACT (DTPA)

Illegality, §§ 3.7, 3.10

DECLARATORY RELIEF

Equitable relief, §§ 10.37-10.39

DEFENSES

Contracts and Agreements, this index

DEFINITIONS

Consideration, § 1.13

Contracts and agreements, § 9.2

Discharge from contract, §§ 11.4,

11.11, 11.12

Illegality, §§ 3.12, 3.17, 3.25

DEFINITIONS—Cont'd

Mistake, § 2.2

Parties outside the contract, § 5.1

DEGREE OF INTEGRATION

Interpretation of contract, § 8.3

DELEGATION

Parties Outside the Contract, this index

DIRECT DAMAGES

Damages for breach of contract, § 10.8

DISABILITY

Incapacity, § 2.45

DISAFFIRMANCE

Incapacity, §§ 2.40, 2.49

DISCHARGE FROM CONTRACT

Generally, §§ 11.1-11.25

Accord and satisfaction, discharge by, generally, §§ 11.11-11.15

Agreement or covenant not to sue. discharge by, § 11.21

Alteration, discharge by, §§ 11.16, 11.19

Burden of proof of substantial performance, § 11.7

Compromise and settlement, discharge by, generally, §§ 11.11-11.15

Covenant not to sue, discharge by, § 11.21

Definitions, §§ 11.4, 11.11, 11.12

Determination of substantial performance, § 11.5

Full performance, § 11.2

Implied conditions, discharge by nonoccurrence of, § 11.24

Impossibility, discharge by, § 11.22 Impracticability, discharge by,

§ 11.23

Measure of recovery for substantial performance, § 11.6

Modification, discharge by, §§ 11.16, 11.18

Nonoccurrence of condition, discharge by, §§ 11.24, 11.25

DISCHARGE FROM CONTRACT -Cont'd

Novation, discharge by, generally, §§ 11.11-11.15

Payment, discharge by, § 11.10

Performance, discharge by

Generally, §§ 11.2-11.10

Burden of proof of substantial performance, § 11.7

Definition of substantial performance, § 11.4

Determination of substantial performance, § 11.5

Full performance, § 11.2

Measure of recovery for substantial performance, § 11.6

Payment, discharge by, § 11.10 Pleading substantial performance, § 11.9

Substantial performance, generally, §§ 11.3-11.10

Types of contracts covered by substantial performance, § 11.8

Pleading substantial performance, § 11.9

Precedent conditions, discharge by nonoccurrence of, § 11.25

Release, discharge by, § 11.20

Rescission, discharge by, §§ 11.16, 11.17

Restatement definitions, § 11.11 Subsequent conditions, discharge by nonoccurrence of, § 11.25

Substantial performance. Performance, discharge by, above

Substituted contract or performance, discharge by, generally, §§ 11.11-11.15

DIVISIBLE CONTRACTS

Statute of frauds and writing requirement, § 4.24

DOCTOR-PATIENT RELATIONSHIP

Contorts, § 6.5

DURESS, COERCION, AND UNDUE INFLUENCE

Generally, §§ 2.33-2.36

INDEX DURESS, COERCION, AND **EQUITABLE RELIEF—Cont'd** UNDUE INFLUENCE—Cont'd Injunctions, §§ 10.34-10.36 Burden of proof, § 2.33 Judiciable controversy needed for Contracts and agreements declaratory relief, § 10.38 Generally, §§ 2.33-2.36 Maxims of equity, § 10.33 Mistakes, § 10.40 Burden of proof, § 2.33 Elements of duress, § 2.35 Privity of contract, § 10.41 Fact questions and legal questions, Reformation, § 10.41 § 2.34 Rescission, § 10.40 Injunctive relief, § 2.36 Specific performance of contract, Questions of law and fact, § 2.34 § 10.29 Remedy for duress, § 2.36 Unilateral mistakes, § 10.40 Elements of duress, § 2.35 **ESTOPPEL** Fact questions and legal questions, Waiver and Estoppel, this index § 2.34 Injunctive relief, § 2.36 ETHICAL CONSIDERATIONS Questions of law and fact, § 2.34 Illegality, § 3.12 Remedy for duress, § 2.36 **EXCEPTIONS** ELECTION OR OPTION Consideration, this index Anticipatory repudiation or breach of Incapacity, §§ 2.41-2.44, 2.50 contract, § 9.12 Parties outside the contract, § 5.4 Statute of frauds and writing require-

Contracts and agreements, § 9.12 Options, this index Remedies, election of, § 10.3

E-MAIL

Offer and acceptance, §§ 1.3, 1.7

EQUITABLE RELIEF

Generally, §§ 10.33-10.41 Actual controversy needed for declaratory relief, § 10.38 Contracts and agreements Generally, §§ 10.33-10.41 Actual controversy needed for declaratory relief, § 10.38 Declaratory relief, §§ 10.37-10.39 Injunctions, §§ 10.34-10.36 Judiciable controversy needed for declaratory relief, § 10.38 Maxims of equity, § 10.33 Mistakes, § 10.40 Privity of contract, § 10.41 Reformation, § 10.41 Rescission, § 10.40 Specific performance of contract, § 10.29 Unilateral mistakes, § 10.40

Declaratory relief, §§ 10.37-10.39

ment, §§ 4.25-4.31 **EXCUSES FOR** NONPERFORMANCE OF

CONTRACT Generally, §§ 7.1-7.15

Anticipatory repudiation, § 7.15 Breach, §§ 7.10, 7.15 Burden of proof and conditions, § 7.7 Concurrent conditions, § 7.5 Conditions, §§ 7.2-7.11 Excusing performance of condition, §§ 7.8-7.10 Express conditions, § 7.6 Forfeiture, avoidance of, § 7.8 Frustration, § 7.14 Implied conditions, § 7.6 Impossibility, § 7.12 Impracticability, § 7.13 Nonoccurrence of condition, effects of, § 7.11 Objective impossibility, § 7.12 Parol evidence, § 7.3 Precedent conditions, § 7.3 Subjective impossibility, § 7.12 Subsequent conditions, § 7.4

EXCUSES FOR NONPERFORMANCE OF CONTRACT—Cont'd

Supervening objective impossibility, § 7.12

Waiver of conditions, § 7.9

EXECUTORS

Statute of frauds and writing requirement, § 4.9

EXECUTORY CONTRACTS

Anticipatory repudiation or breach of contract, § 9.13

EXEMPLARY DAMAGES

Fraud and misrepresentation, § 2.27

EXPECTANCY

Damages for breach of contract, §§ 10.9-10.13

EXPRESS CONDITIONS

Excuses for nonperformance, § 7.6

FAILURE OF CONSIDERATION

Generally, §§ 1.22-1.25

FALSITY REQUIREMENT

Fraud and misrepresentation, § 2.19

FEDERAL ARBITRATION ACT (FAA), GENERALLY

Arbitration, § 9.17

FEES

Illegality, § 3.19

FIDUCIARY DUTY

Fraud and misrepresentation, § 2.32

FIRM OFFERS

Consideration, § 1.16

FIVE HUNDRED DOLLARS

Statute of frauds and writing requirement, § 4.8

FORESEEABILITY

Damages for breach of contract, § 10.4

FORFEITURE

Excuses for nonperformance, § 7.8

FORMATION OF CONTRACTS

Contracts and Agreements, this index

FRAUD AND

MISREPRESENTATION

Generally, §§ 2.12-2.32 Common law fraud, generally, §§ 2.13-2.24

Consequential damages, § 2.27

Consideration, § 1.23

Constructive fraud, § 2.26

Contorts, § 6.6

Contracts and agreements

Generally, §§ 2.12-2.32

Common law fraud, generally, §§ 2.13-2.24

Consequential damages, § 2.27

Consideration, § 1.23

Constructive fraud, § 2.26

Contorts, § 6.6

Contractual promises, § 2.17

Damages, §§ 2.27, 2.31

Deceptive Trade Practices Act (DTPA), §§ 3.7, 3.10

Defenses, §§ 2.24, 2.30

Exemplary damages, § 2.27

Falsity requirement, § 2.19

Fiduciary duty, breach of, § 2.32

Incapacity, § 2.44

Injury requirement, § 2.23

Instructions to jury, generally,

§§ 2.13-2.15, 2.21, 2.26

Intent, §§ 2.17, 2.20

Investigation of truth of assertions, obligation as to, § 2.22

Jury instructions, generally,

§§ 2.13-2.15, 2.21, 2.26

Knowledge of falsity, § 2.20

Law, statements about, § 2.16

Limitation of actions as defense,

§ 2.24

Limits of cause of action for negligent misrepresentation, § 2.29

Materiality requirement, § 2.14 Negligent misrepresentation,

§§ 2.28-2.31

Omission or silence, § 2.18

Index-8

FRAUD AND FRAUD AND **MISREPRESENTATION** MISREPRESENTATION —Cont'd —Cont'd Contracts and agreements—Cont'd Opinion statements versus statements Opinion statements versus stateof fact, § 2.15 Puffing, § 2.15 ments of fact, § 2.15 Puffing, § 2.15 Punitive damages, § 2.27 Punitive damages, § 2.27 Ratification as defense, § 2.24 Ratification as defense, § 2.24 Reliance, §§ 2.18, 2.21 Reliance, §§ 2.18, 2.21 Rescission of contract, § 2.27 Rescission of contract, § 2.27 Silence or omission, § 2.18 Silence or omission, § 2.18 Statute of frauds, §§ 2.24, 4.23 Statute of frauds, §§ 2.24, 4.23 Statute of limitations as defense, Statute of limitations as defense, § 2.24 § 2.24 Statutory fraud, § 2.25 Truth of assertions, investigation of, Statutory fraud, § 2.25 Truth of assertions, investigation § 2.22 of, § 2.22 Value, exaggerated statements of, § 2.15 Value, exaggerated statements of, § 2.15 Waiver as defense, § 2.24 Waiver as defense, § 2.24 FRUSTRATION Contractual promises, § 2.17 Excuses for nonperformance, § 7.14 Damages, §§ 2.27, 2.31 Deceptive Trade Practices Act **FULL PERFORMANCE** (DTPA), §§ 3.7, 3.10 Discharge from contract, § 11.2 Defenses, §§ 2.24, 2.30 Statute of frauds and writing require-Exemplary damages, § 2.27 ment, § 4.34 Falsity requirement, § 2.19 **FUTURE INTERESTS** Fiduciary duty, breach of, § 2.32 Parties outside the contract, § 5.8 Incapacity, § 2.44 Injury requirement, § 2.23 **GOOD FAITH** Instructions to jury, generally, Contorts, § 6.4 §§ 2.13-2.15, 2.21, 2.26 Contracts and agreements, § 9.6 Intent, §§ 2.17, 2.20 Investigation of truth of assertions, **GOVERNING LAW** obligation as to, § 2.22 Arbitration, § 9.17 Jury instructions, generally, §§ 2.13-Illegality, § 3.4 2.15, 2.21, 2.26 **ILLEGALITY OF CONTRACT** Knowledge of falsity, § 2.20 Law, statements about, § 2.16 Generally, §§ 3.1-3.31 Limitation of actions as defense, Absolute obligation to repay § 2.24 principal, § 3.20 Limits of cause of action for Alienation, restraints on, §§ 3.24negligent misrepresentation, 3.27 § 2.29 Assumption of third party's debt, Materiality requirement, § 2.14 § 3.19 Negligent misrepresentation, §§ 2.28-Charges distinguished from interest, § 3.19 2.31 Omission or silence, § 2.18 Choice of law, § 3.4

ILLEGALITY OF CONTRACT ILLEGALITY OF CONTRACT -Cont'd -Cont'd Commissions distinguished from Rule against perpetuities, § 3.27 interest, § 3.19 Scope of coverage, § 3.1 Common law remedies for usury, Severability, § 3.3 § 3.13 Specific performance of contract, Consideration, §§ 1.14, 3.23 §§ 3.11, 10.28 Constitutionality of usury statutes, Statutes and statutory provisions, § 3.15 generally, §§ 3.7, 3.13 Construction of usury statutes, § 3.14 Temporal elements, § 3.2 Deceptive Trade Practices Act Temporal elements in determining (DTPA), §§ 3.7, 3.10 usury, § 3.22 Defenses to usury claims, § 3.16 Time consideration in relation to Definitions, §§ 3.12, 3.17, 3.25 usury, § 3.22 Ethical considerations for usury, UCC, unconscionability as defense § 3.12 under, § 3.11 Fees distinguished from interest, Unconscionability, §§ 3.9-3.11 § 3.19 Usury Immorality, § 3.23 Generally, §§ 3.12-3.22 Injunctive relief, § 3.10 Absolute obligation to repay Interest. Usury, below principal, § 3.20 Late penalties, § 3.21 Assumption of third party's debt, Marriage promise as consideration, § 3.19 § 3.23 Burden of proof, § 3.14 Mental anguish, damages for, § 3.10 Charges distinguished from inter-Mistake, defense of, § 3.16 est, § 3.19 Noncompetition agreements, §§ 3.29-Commissions distinguished from 3.31 interest, § 3.19 Partial illegality, effect of, § 3.3 Common law remedies, § 3.13 Perpetuities, rule against, § 3.27 Constitutionality, § 3.15 Prepayment penalties, §§ 3.19, 3.25 Construction of statutes, § 3.14 Presumptions and burden of proof, Defenses to claims, § 3.16 §§ 3.1, 3.5, 3.9, 3.14, 3.30 Definitions, §§ 3.12, 3.17 Price differentials, § 3.18 Ethical considerations, § 3.12 Prostitution business, § 3.23 Public policy, §§ 3.1, 3.8 Fees distinguished from interest, § 3.19 Rates of interest, §§ 3.15, 3.21 Late penalties, § 3.21 Ratification of contract, § 3.2 Mistake, defense of, § 3.16 Reasonableness Prepayment penalties, § 3.19 Noncompetition agreements, Presumptions and burden of proof, § 3.30 § 3.14 Restraints on alienation, § 3.26 Price differentials, § 3.18 Reformation of noncompetition Rates charged, general principles agreements, § 3.31 in determining, § 3.21 Relief available under illegal contract, § 3.6 Rates established by statute, § 3.15 Restraint of trade, contracts in, Statutory versus common law rem-§§ 3.28-3.31 edies, § 3.13 Restraints on alienation, §§ 3.24-3.27 Time considerations, §§ 3.18, 3.22

ILLEGALITY OF CONTRACT

—Cont'd

Void nature of contract, generally, § 3.1

Waiver of right to reformation, § 3.31

IMMORALITY

Morality or Immorality, this index

IMPLIED CONDITIONS

Discharge from contract, § 11.24 Excuses for nonperformance, § 7.6

IMPLIED OFFER

Generally, § 1.10

IMPOSSIBILITY

Discharge from contract, § 11.22 Excuses for nonperformance, § 7.12

IMPRACTICABILITY

Discharge from contract, § 11.23 Excuses for nonperformance, § 7.13

INCAPACITY TO CONTRACT

Generally, §§ 2.37-2.51

Children or minors, generally, §§ 2.39-2.46

Disability, end of, § 2.45

Disaffirmance, §§ 2.40, 2.49

End of disability, § 2.45

Exceptions, §§ 2.41-2.44, 2.50

Fraud, exceptions as to minors, § 2.44

Insanity, §§ 2.47-2.50

Intoxication, § 2.38

Mental incapacity, §§ 2.47-2.50

Minors, generally, §§ 2.39-2.46

Necessaries, §§ 2.42, 2.50

Presumptions, §§ 2.40, 2.48

Ratification, §§ 2.46, 2.51

Remedies available to minors, § 2.40

Repudiation by minors, § 2.40

Rescission by the insane, § 2.49

Specific performance of contract,

§ 10.31

Statutory authority, contracts of minors made under, § 2.43

Test for mental incapacity, § 2.48

Time for disaffirmance by minor, § 2.40

INJUNCTIONS

Duress, coercion, and undue influence, § 2.36
Equitable relief, §§ 10.34-10.36

Illegality, § 3.10

INSANITY

Incapacity, §§ 2.47-2.50

INSTALLMENT CONTRACTS

Breach of contract, §§ 9.9, 9.11

INSTRUCTIONS OF SELLER

Contracts and agreements, § 9.6

INSTRUCTIONS TO JURY

Fraud and Misrepresentation, this index

INSURANCE POLICIES

Interpretation of contract, § 8.7

INTEGRATION

Interpretation of contract, § 8.3

INTENT

Fraud and misrepresentation, §§ 2.17, 2.20

Parties outside the contract, § 5.21

INTEREST

Illegality, this index

INTERFERENCE

Contorts, § 6.8

INTERPRETATION OF CONTRACT

Generally, §§ 8.1-8.11

Absolute pollution exclusion in insurance policies, § 8.7

Ambiguity, §§ 8.1, 8.4-8.7, 8.10

Avoiding parol evidence rule, suggestions for, §§ 8.8-8.10

Commercial code, parol evidence rule under, § 8.11

Deeming a contract ambiguous or unambiguous, §§ 8.5, 8.6

Degree of integration, determination of, § 8.3

Illegality, § 3.14

Insurance policies, pollution exclusion in, § 8.7

INTERPRETATION OF CONTRACT—Cont'd

Integration, determination of degree of, § 8.3

Merger clauses, § 8.9

Modern trend in problem of ambiguity, § 8.7

Multiple meanings of language, §§ 8.1, 8.4-8.7, 8.10

Parol evidence rule, generally, §§ 8.2-8.11

Patent and latent ambiguity, generally, § 8.4

Pollution exclusion in insurance policies, § 8.7

Principles of interpretation, generally, § 8.1

Vagueness, avoidance of, § 8.10

INTOXICATION

Incapacity, § 2.38

INVESTIGATION

Fraud and misrepresentation, § 2.22

JUDICIABLE CONTROVERSY

Equitable relief, § 10.38

JUDICIAL PROCEEDINGS

Contracts and agreements, § 9.21

JURY INSTRUCTIONS

Fraud and Misrepresentation, this index

KNOWLEDGE

Notice or Knowledge, this index

LACK OF CONSIDERATION

Parties outside the contract, § 5.2

LAND SALE CONTRACTS

Statute of frauds and writing requirement, § 4.28

LATE PENALTIES

Illegality, § 3.21

LEASE CONTRACTS

Statute of frauds and writing requirement, §§ 4.6, 4.28

LIMITATION OF ACTIONS

Fraud and misrepresentation, § 2.24

LIMITATIONS AND RESTRICTIONS

Damages for breach of contract, §§ 10.4-10.6

Fraud and misrepresentation, § 2.29

LIQUIDATED DAMAGES

Damages for breach of contract, § 10.21

LOST PROFITS

Damages for breach of contract, § 10.10

LOVE AND AFFECTION

Consideration, § 1.14

MAILBOX RULE

Offer and acceptance, § 1.6

MAIN PURPOSE RULE

Statute of frauds and writing requirement, § 4.4

MALPRACTICE CASES

Contorts, § 6.5

MARRIAGE AND MARRIAGE CONTRACTS

Consideration, § 1.14

Illegality, § 3.23

Statute of frauds and writing requirement, §§ 4.7, 4.30

MATERIAL BREACH DOCTRINE

Contracts and agreements, §§ 9.3, 9.5-9.7

MATERIALITY

Fraud and misrepresentation, § 2.14 Mistake, § 2.6

MAXIMS OF EQUITY

Equitable relief, § 10.33

MEDICAL CARE, WARRANTIES OF

Statute of frauds and writing requirement, § 4.11

MEETING OF THE MINDS

Offer and acceptance, § 1.11

MEMORANDUM

Statute of frauds and writing requirement, § 4.1

MENTAL ANGUISH

Illegality, § 3.10

MENTAL INCAPACITY

Incapacity, §§ 2.47-2.50

MERE DEVIATION

Damages for breach of contract, § 10.13

MERGER CLAUSES

Interpretation of contract, § 8.9

MINORS

Incapacity, this index

MIRROR IMAGE RULE

Offer and acceptance, § 1.5

MISREPRESENTATION

Fraud and Misrepresentation, this index

MISTAKE

Generally, §§ 2.2-2.11

Burden of proof and presumptions, §§ 2.3, 2.7

Contracts and agreements

Generally, §§ 2.2-2.11

Burden of proof and presumptions, §§ 2.3, 2.7

Defined, § 2.2

Fact mistake versus mistake of law, § 2.4

Illegality, § 3.16

Materiality of m mistake, § 2.6

Mutual mistake, generally, §§ 2.3-2.10

Mutuality of mistake, § 2.5

Negligence and mutual mistake, § 2.9

Presumptions and burden of proof, §§ 2.3, 2.7

Reading of contract, presumption as to, § 2.3

Reformation of contract, § 2.10

Remedies for mutual mistake, § 2.10

Rescission of contract, § 2.10

MISTAKE—Cont'd

Contracts and agreements—Cont'd Speculative mistake, § 2.8

Unilateral mistake, § 2.11

Defined, § 2.2

Equitable relief, § 10.40

Fact mistake versus mistake of law, § 2.4

Illegality, § 3.16

Materiality of m mistake, § 2.6

Mutual mistake, generally, §§ 2.3-2.10

Mutuality of mistake, § 2.5

Negligence and mutual mistake, § 2.9

Presumptions and burden of proof,

§§ 2.3, 2.7

Reading of contract, presumption as to, § 2.3

Reformation of contract, § 2.10

Remedies for mutual mistake, § 2.10

Rescission of contract, § 2.10

Speculative mistake, § 2.8

Unilateral mistake, §§ 2.11, 10.40

MITIGATION OF DAMAGES

Damages for breach of contract, § 10.6

MODES

Offer and acceptance, §§ 1.3-1.7

MODIFICATION OR CHANGE

Consideration, § 1.21

Contracts and agreements, § 9.7

Discharge from contract, §§ 11.16, 11.18, 11.19

Statute of frauds and writing requirement, § 4.36

MORALITY OR IMMORALITY

Consideration, § 1.14

Illegality of contract, § 3.23

MOTIVATION

Consideration distinguished, § 1.13

MULTIPLE MEANINGS OF LANGUAGE

Interpretation of contract, §§ 8.1, 8.4-8.7, 8.10

MULTIPLE PROMISES

Consideration for, § 1.14

MULTIPLE WRITINGS

Statute of frauds and writing requirement, §§ 4.20-4.22

MUTUAL MISTAKE

Mistake, this index

MUTUAL WILLS

Statute of frauds and writing requirement, § 4.29

NECESSARIES

Incapacity, §§ 2.42, 2.50

NEGLIGENCE

Misrepresentation, generally, §§ 2.28-2.31 Mistake, § 2.9

NOMINAL DAMAGES

Damages for breach of contract, § 10.19

NONCOMPETITION AGREEMENTS

Illegality, §§ 3.29-3.31

NONCONFORMING GOODS

Contracts and agreements, § 9.7

NONOCCURRENCE OF CONDITION

Discharge from contract, §§ 11.24, 11.25

NONPERFORMANCE

Excuses for Nonperformance, this index

NOTICE OR KNOWLEDGE

Contracts and agreements, § 9.7 Fraud and misrepresentation, § 2.20

NOVATION

Discharge from contract, §§ 11.11-11.15

OBJECTIVE IMPOSSIBILITY

Excuses for nonperformance, § 7.12

OBLIGATIONS

Contorts, § 6.3

Index-14

OBLIGORS

Parties outside the contract, §§ 5.14, 5.18

OFFER AND ACCEPTANCE

Generally, §§ 1.2-1.11

Anticipatory repudiation or breach of contract, § 9.12

Communication requirement, § 1.4

Counter offer and rejection, § 1.9

E-mail, §§ 1.3, 1.7

Essential terms, communication of, § 1.2

Implied offer and acceptance, § 1.10

Mailbox rule, § 1.6

Meeting of the minds, § 1.11

Mirror image rule, § 1.5

Modes of offer and acceptance, §§ 1.3-1.7

Parties outside the contract, § 5.22

Rejection and counter offer, § 1.9

Revocation, §§ 1.8, 9.7

Third party beneficiary contracts, § 1.2

OMISSION OR SILENCE

Fraud and misrepresentation, § 2.18

ONE YEAR, AGREEMENTS NOT PERFORMABLE WITHIN

Statute of frauds and writing requirement, § 4.5

OPINION STATEMENTS

Fraud and misrepresentation, § 2.15

OPTION

Election or Option, this index

ORAL LAND SALE AND LEASE CONTRACTS

Statute of frauds and writing requirement, § 4.28

OWNERSHIP

Contracts and agreements, § 9.6

PAROL EVIDENCE

Contracts and Agreements, this index Excuses for nonperformance, § 7.3 Interpretation of Contract, this index

PART PERFORMANCE

Statute of frauds and writing requirement, §§ 4.27-4.31

PARTIAL ASSIGNMENTS

Parties outside the contract, § 5.3

PARTIAL BREACH

Contracts and agreements, §§ 9.4, 9.9

PARTIAL FAILURE OF CONSIDERATION

Generally, § 1.25

PARTIAL ILLEGALITY

Illegality, § 3.3

PARTIES OUTSIDE THE CONTRACT

Generally, §§ 5.1-5.23

Acceptance by third party, § 5.22

Agreement, rights of particular parties under, § 5.15

Assignment and delegation, § 5.1

Assignments

Generally, §§ 5.2-5.8

Assignable rights, § 5.3

Assignees, rights of, § 5.12

Assignor, rights of, § 5.13

Consent or approval, § 5.3

Consideration, lack of, § 5.2

Credit contracts, § 5.5

Exceptions to rule of assignability, § 5.4

Future interests, assignments of, § 5.8

Lack of consideration, § 5.2

Obligors, rights of, § 5.14

Partial assignments, § 5.3

Particular parties under an assignment, rights of, §§ 5.12-5.14

Personal service contracts, § 5.6

Public policy, assignments in violation of, § 5.7

Requirements for effective assignment, § 5.2

Unassignable rights, §§ 5.4-5.8

Consent or approval to assignments, § 5.3

Consideration for assignment, lack of, § 5.2

PARTIES OUTSIDE THE CONTRACT—Cont'd

Credit contracts, assignments of, § 5.5

Definitions, § 5.1

Delegation

Generally, §§ 5.9-5.11

Delegatee, rights of, § 5.16

Delegator, rights of, § 5.17

Obligor, rights of, § 5.18

Particular parties under a delegation, rights of, §§ 5.16-5.18

Exceptions to rule of assignability, § 5.4

Future interests, assignments of, § 5.8

Intent to benefit third party, § 5.21

Lack of consideration for assignment, § 5.2

Obligors, rights of, §§ 5.14, 5.18

Partial assignments, § 5.3

Personal service contracts, assignment of, § 5.6

Promisee, rights of, § 5.23

Public policy, assignments in violation of, § 5.7

Third party beneficiaries

Generally, §§ 5.19-5.23

Acceptance by third party, § 5.22

Historical beginnings, § 5.20

Intent to benefit third party, § 5.21

Promisee, rights of, § 5.23

Requirements to create status,

§ 5.21

Unassignable rights, §§ 5.4-5.8

PAST CONSIDERATION

Generally, § 1.14

PATENT AND LATENT AMBIGUITY

Interpretation of contract, § 8.4

PAYMENT

Discharge from contract, § 11.10

PERFORMANCE

Consideration, § 1.12

Discharge from Contract, this index

PERPETUITIES, RULE AGAINST

Illegality, § 3.27

PERSONAL SERVICE **CONTRACTS**

Parties outside the contract, § 5.6

PHYSICIAN-PATIENT RELATIONSHIP

Contorts, § 6.5

PLEADINGS

Discharge from contract, § 11.9

POLLUTION EXCLUSION

Interpretation of contract, § 8.7

POSSESSION OF GOODS

Contracts and agreements, § 9.6

PRECEDENT CONDITIONS

Discharge from contract, § 11.25 Excuses for nonperformance, § 7.3

PREPAYMENT PENALTIES

Illegality, §§ 3.19, 3.25

PRESUMPTIONS AND BURDEN **OF PROOF**

Consideration, § 1.20

Contracts and agreements

Consideration, § 1.20

Duress, coercion, and undue influence, § 2.33

Illegality, §§ 3.1, 3.5, 3.9, 3.14, 3.30

Incapacity, §§ 2.40, 2.48

Mistake, §§ 2.3, 2.7

Discharge from contract, § 11.7 Duress, coercion, and undue influ-

ence, § 2.33

Excuses for nonperformance, § 7.7 Illegality, §§ 3.1, 3.5, 3.9, 3.14, 3.30

Incapacity, §§ 2.40, 2.48 Mistake, §§ 2.3, 2.7

PRICE DIFFERENTIALS

Illegality, § 3.18

PRIVITY OF CONTRACT

Equitable relief, § 10.41

Statute of frauds and writing requirement, § 4.33

PROMISEE

Parties outside the contract, § 5.23

PROMISSORY ESTOPPEL

Consideration, §§ 1.17-1.19

Damages for breach of contract, § 10.15

Statute of frauds and writing requirement, § 4.26

PROSTITUTION BUSINESS

Illegality, § 3.23

PUBLIC POLICY

Arbitration, § 9.16

Illegality, §§ 3.1, 3.8

Parties outside the contract, § 5.7

PUFFING

Fraud and misrepresentation, § 2.15

PUNITIVE DAMAGES

Generally, § 10.20

Fraud and misrepresentation, § 2.27

QUANTUM MERUIT

Damages for breach of contract, § 10.18

Statute of frauds and writing requirement, § 4.31

QUESTIONS OF LAW AND FACT

Contracts and agreements, § 9.3

Duress, coercion, and undue influence, § 2.34

RATES OF INTEREST

Illegality, §§ 3.15, 3.21

RATIFICATION OF CONTRACT

Fraud and misrepresentation, § 2.24

Illegality, § 3.2

Incapacity, §§ 2.46, 2.51

READING OF CONTRACT

Mistake, § 2.3

REAL ESTATE CONTRACTS

Statute of frauds and writing requirement, § 4.6

REASONABLENESS

Illegality, this index

REFORMATION OF CONTRACT

Equitable relief, § 10.41

Illegality, § 3.31

Index-16

REFORMATION OF CONTRACT

—Cont'd Mistake, § 2.10

REJECTION

Offer and acceptance, § 1.9

REJECTION OF GOODS

Contracts and agreements, § 9.6

RELATIONSHIP OF PARTIES

Contorts, § 6.5

RELEASE

Discharge from contract, § 11.20

RELIANCE

Consideration, § 1.19
Damages for breach of contract,
§§ 10.14, 10.15

Fraud and misrepresentation, §§ 2.18, 2.21

REMEDIES

Anticipatory repudiation or breach of contract, § 9.12

Contracts and Agreements, this index

Duress, remedy for, § 2.36 Incapacity, § 2.40

Mistake, remedy for, § 2.10
Promissory estoppel, remedy for, § 1.19

REPUDIATION

Anticipatory Repudiation, this index

RESCISSION OF CONTRACT

Generally, § 9.3

Anticipatory repudiation or breach of contract, § 9.12

Discharge from contract, §§ 11.16, 11.17

Equitable relief, § 10.40

Fraud and misrepresentation, § 2.27

Incapacity, § 2.49 Mistake, § 2.10

RESELLING

Contracts and agreements, § 9.6

RESHIPPING REJECTED GOODS

Contracts and agreements, § 9.6

RESTITUTION

Damages for breach of contract, §§ 10.16-10.18

RESTRAINT OF TRADE

Illegality, §§ 3.28-3.31

RESTRAINTS ON ALIENATION

Illegality, §§ 3.24-3.27

REVOCATION

Anticipatory repudiation or breach of contract, § 9.14

Contracts and Agreements, this index Offer and acceptance, § 1.8

RULE AGAINST PERPETUITIES

Illegality, § 3.27

SALE OF GOODS

Statute of frauds and writing requirement, § 4.8

SEAL

Consideration, § 1.20

SEVERABLE CONTRACTS

Illegality, § 3.3

Statute of frauds and writing requirement, § 4.25

SIGNATURES

Statute of frauds and writing requirement, §§ 4.15, 4.22

SILENCE OR OMISSION

Fraud and misrepresentation, § 2.18

SPECIFIC PERFORMANCE OF CONTRACT

Generally, §§ 10.25-10.32

Availability, §§ 10.25-10.31

Capacity for performance, § 10.31

Enforceable contract, § 10.28

Enforcement, § 10.32

Equitable contract, § 10.29

Illegal contract, §§ 3.11, 10.28

Tender of performance, § 10.30

SPECULATIVE MISTAKE

Generally, § 2.8

STATUTE OF FRAUDS AND WRITING REQUIREMENT

Generally, §§ 2.24, 4.1-4.36

Agent, signature by, § 4.15

Appropriate persons to invoke statute, § 4.33

Commissions, § 4.10

Connection between writings, necessity of, § 4.21

Consideration, § 4.16

Contents, §§ 4.13-4.16

Covered contracts, §§ 4.3-4.11

Divisible contracts, § 4.24

Estoppel and waiver, §§ 4.26, 4.35

Exceptions to lack of enforceability, §§ 4.25-4.31

Executor, promises of, § 4.9

Failure to comply with statute, effect of, §§ 4.23-4.31

Five hundred dollars, sale of goods in excess of, § 4.8

Form of writing satisfying the statute, §§ 4.18-4.22

Fraud, effect of, § 4.23

Full performance, effect of, § 4.34

History, § 4.2

Introduction, § 4.1

Land sale and lease contracts, § 4.28

Lease contracts, §§ 4.6, 4.28

Main purpose rule, § 4.4

Marriage and marriage contracts, §§ 4.7, 4.30

Medical care, warranties of, § 4.11

Memorandum, § 4.1

Modification of contract, § 4.36

Multiple writings as satisfying the statute, §§ 4.20-4.22

Mutual wills, oral promise to make, § 4.29

One year, agreements not performable within, § 4.5

Oral land sale and lease contracts, § 4.28

Part performance, §§ 4.27-4.31

Privity of contract, § 4.33

Promises to answer for another, § 4.4

Promissory estoppel, § 4.26

Prospective nature of statute, § 4.32

Purpose, § 4.2

STATUTE OF FRAUDS AND WRITING REQUIREMENT

—Cont'd

Quantum meruit, § 4.31

Real estate contracts, § 4.6

Sale of goods in excess of five hundred dollars, § 4.8

Satisfying the statute, generally, §§ 4.12-4.22

Severable contracts, § 4.25

Signatures, §§ 4.15, 4.22

Subject matter, § 4.14

Suretyship, § 4.4

Timing, § 4.17

Waiver and estoppel, §§ 4.26, 4.35

Warranties of medical care, § 4.11

Wills as satisfying the statute, § 4.19

STATUTE OF LIMITATIONS

Fraud and misrepresentation, § 2.24

STATUTES AND STATUTORY PROVISIONS

Generally, § 2.25

Illegality, §§ 3.7, 3.13

Incapacity, § 2.43

STAY OF JUDICIAL PROCEEDINGS

Arbitration, § 9.18

Contracts and agreements, § 9.21

STORAGE OF REJECTED GOODS

Contracts and agreements, § 9.6

SUBJECTIVE IMPOSSIBILITY

Excuses for nonperformance, § 7.12

SUBSEQUENT CONDITIONS

Discharge from contract, § 11.25

Excuses for nonperformance, § 7.4

SUBSTANTIAL PERFORMANCE OF CONTRACT

Damages for breach of contract, § 10.12

Discharge from Contract, this index

SUBSTITUTED CONTRACT OR PERFORMANCE

Discharge from contract, §§ 11.11-11.15

SUPERVENING OBJECTIVE IMPOSSIBILITY

Excuses for nonperformance, § 7.12

SURETYSHIP

Statute of frauds and writing requirement, § 4.4

TENDER OF PERFORMANCE

Specific performance of contract, § 10.30

TESTS AND TESTING

Incapacity, § 2.48

TEXAS UNIFORM COMMERCIAL CODE

Contracts and agreements, §§ 9.5-9.9

THIRD PARTIES

Offer and acceptance, § 1.2
Parties Outside the Contract, this index

THIRD PARTY BENEFICIARY CONTRACTS

Offer and acceptance, § 1.2

TIME OR DATE

Contracts and Agreements, this index Illegality, §§ 3.18, 3.22 Incapacity, § 2.40 Statute of frauds and writing requirement, § 4.17

TORTIOUS INTERFERENCE

Contorts, § 6.8

TOTAL BREACH

Contracts and agreements, § 9.4

TRUTH OF ASSERTIONS

Fraud and misrepresentation, § 2.22

UCC

Illegality, § 3.11

UNASSIGNABLE RIGHTS

Parties outside the contract, §§ 5.4-5.8

UNCONSCIONABILITY

Illegality, §§ 3.9-3.11

UNILATERAL MISTAKE

Generally, § 2.11 Equitable relief, § 10.40

UNJUST ENRICHMENT

Damages for breach of contract, § 10.17

USURY

Illegality of Contract, this index

VAGUENESS

Interpretation of contract, § 8.10

VALUE AND VALUATION

Fraud and misrepresentation, § 2.15

WAIVER AND ESTOPPEL

Arbitration, § 9.16

Excuses for nonperformance, § 7.9 Fraud and misrepresentation, § 2.24 Illegality, § 3.31

Promissory Estoppel, this index Statute of frauds and writing requirement, §§ 4.26, 4.35

WARRANTIES

Statute of frauds and writing requirement, § 4.11

WILLS

Statute of frauds and writing requirement, § 4.19

WRITING AND WRITTEN INSTRUMENTS

Consideration, § 1.20 Statute of Frauds and Writing Requirement, this index