CHAPTER 1. FORMATION

| § 1.1 | Scope of coverage |
|--------|---|
| § 1.2 | Offer and acceptance |
| § 1.3 | Offer and acceptance—Modes of offer and acceptance |
| § 1.4 | Offer and acceptance—Modes of offers and acceptance—Requirement of communication [Retitled] |
| § 1.5 | Offer and acceptance—Modes of offers and acceptance—The mirror image rule [Retitled] |
| § 1.6 | Offer and acceptance—Modes of offers and acceptance—The mailbox rule [Retitled] |
| § 1.7 | Offer and acceptance—Modes of offers and acceptance—The effect of e-mail [Retitled] |
| § 1.8 | Offer and acceptance—Revocation |
| § 1.9 | Offer and acceptance—Rejection & counter-offer |
| § 1.10 | Offer and acceptance—Implied offer and acceptance |
| | Offer and acceptance—Meeting of the minds |
| | Consideration |
| § 1.13 | Consideration—Generally |
| | Consideration—Sufficiency |
| § 1.17 | Consideration—Exceptions to requirement—Promissory estoppel |
| § 1.18 | Consideration—Exceptions to requirement—Promissory estoppel—Elements of promissory estoppel |
| § 1.20 | Consideration—Exceptions to the requirement—Written instruments |
| § 1.21 | Consideration—Exceptions to the requirement—Contract modifications |
| § 1.22 | Consideration—Failure of consideration |
| § 1.23 | Consideration—Failure of consideration—Generally |
| | Consideration—Failure of consideration—Effect of a failure of consideration |
| § 1.25 | Consideration—Failure of consideration—Partial failure of consideration |
| § 1.26 | Formation of quasi contracts [New] |

CHAPTER 2. PROBLEMS OF FORMATION

- § 2.2 Mistake
 § 2.3 Mistake—Mutual mistake
 § 2.6 Mistake—Mutual mistake—Materiality of the mistake
 § 2.7 Mistake—Mutual mistake—Mutual mistake: burden of proof
 § 2.10 Mistake—Mutual mistake—Remedies for mutual mistake
 § 2.11 Mistake—Unilateral mistake
- § 2.12 Fraud and misrepresentation
- § 2.13 Fraud and misrepresentation—Common law fraud

| § 2.15 | Fraud and misrepresentation—Common law fraud—Statements of fact versus statements of opinion |
|-----------|---|
| § 2.18 | Fraud and misrepresentation—Common law fraud—Silence or omission |
| § 2.20 | Fraud and misrepresentation—Common law fraud—Knowledge of falsity and intent to induce action |
| § 2.21 | Fraud and misrepresentation—Common law fraud— Requirement of reliance |
| § 2.22 | Fraud and misrepresentation—Common law fraud—Obligation to investigate truth of assertions |
| § 2.24 | Fraud and misrepresentation—Common law fraud—Defenses |
| | Fraud and misrepresentation—Statutory fraud |
| | Fraud and misrepresentation—Damages |
| | Fraud and misrepresentation—Negligent misrepresentation |
| § 2.29 | |
| § 2.33 | Duress, coercion, and undue influence |
| § 2.34 | |
| § 2.35 | |
| § 2.37 | Incapacity |
| § 2.39 | |
| § 2.48 | |
| $\S 2.51$ | Incapacity—Ratification |
| § 2.52 | Illusory agreements [New] |
| | |

CHAPTER 3. ILLEGALITY

- $\begin{array}{ll} \S \ 3.1 & Scope \ of \ coverage \\ \S \ 3.2 & Temporal \ elements \\ \S \ 3.4 & Choice \ of \ law \end{array}$
- § 3.6 Relief available under an illegal contract
- § 3.7 Contracts that violate statutes
- § 3.8 Contracts that violate public policy
- § 3.9 Unconscionability
- § 3.10 Unconscionability—Under the DTPA
- § 3.12 Usury
- § 3.13 Usury—Statutory versus common law remedies
- § 3.14 Usury—Burden of proof and statutory construction
- § 3.15 Usury—Constitutionally and statutorily established rates
- § 3.18 Usury—Interest distinguished from time—Price differentials
- § 3.21 Usury—General principles in determining the interest rate charged
- § 3.24 Restraints on alienation
- $\S~3.29~$ Contracts in restraint of trade—Noncompetition agreements
- § 3.30 Contracts in restraint of trade—Noncompetition agreements— Burden of proving reasonableness
- § 3.31 Contracts in restraint of trade—Noncompetition agreements— Reformation of invalid agreements

CHAPTER 4. THE WRITING REQUIREMENT: THE STATUTE OF FRAUDS

§ 4.1 Introduction

| § 4.2 History and purpos | § 4.2 | 3 4. | 2 H1 | story | and | purpo | se |
|--------------------------|-------|------|------|-------|-----|-------|----|
|--------------------------|-------|------|------|-------|-----|-------|----|

- § 4.3 Covered contracts
- § 4.4 Covered contracts—Promises to answer for another
- § 4.5 Covered contracts—Agreements not performable within one year
- § 4.6 Covered contracts—Real estate contracts
- § 4.8 Covered contracts—Sale of goods in excess of \$500
- § 4.10 Covered contracts—Commissions
- § 4.12 Satisfying of the statute
- § 4.13 Satisfying the statute—Contents
- § 4.14 Satisfying the statute—Contents—Subject matter
- § 4.15 Satisfying the statute—Contents—Signatures
- § 4.16 Satisfying the statute—Contents—Consideration
- § 4.19 Satisfying the statute—Form—Wills
- § 4.20 Satisfying the statute—Form—Multiple writings
- § 4.21 Satisfying the statute—Form—Necessity of a connection between writings
- § 4.23 Effect of failure to comply with the statute
- § 4.25 Effect of failure to comply with the statute—Exceptions to lack of enforceability
- § 4.26 Effect of failure to comply with the statute—Exceptions to lack of enforceability—Estoppel
- § 4.27 Effect of failure to comply with the statute—Exceptions to lack of enforceability—Part performance
- § 4.28 Effect of failure to comply with the statute—Exceptions to the lack of enforceability—Part performance—Oral land sale and lease contracts
- § 4.31 Effect of failure to comply with the statute—Exceptions to lack of enforceability—Part performance—Quantum meruit
- § 4.32 Effect of failure to comply with the statute—Exceptions to lack of enforceability—Sale of goods
- § 4.33 Appropriate persons to invoke the statute
- § 4.36 Contract modification

CHAPTER 5. PARTIES OUTSIDE THE CONTRACT

- § 5.1 Assignment and delegation
- § 5.2 Assignments—Requirements for an effective assignment
- § 5.3 Assignments—What rights are assignable
- § 5.4 Assignments—What contract rights are unassignable
- § 5.9 Delegation—Requirements for an effective delegation
- § 5.12 Rights of particular parties under an assignment—Rights of assignees
- § 5.14 Rights of particular parties under an assignment—Rights of obligors
- § 5.19 Third party beneficiaries
- § 5.21 Third party beneficiaries—Requirements to create third party beneficiary status—Intent to benefit third party
- § 5.24 Agents and principals [New]

CHAPTER 6. CONTORTS

- § 6.3 Factors for distinguishing contract and tort claims—The obligations
- § 6.4 Factors for distinguishing contract and tort claims—The conduct in performing a promise
- § 6.5 Factors for distinguishing contract and tort claims—The parties' relationship
- § 6.6 Factors for distinguishing contract and tort claims—The nature of the loss
- § 6.8 Tortious interference

CHAPTER 7. EXCUSES FOR NONPERFORMANCE

- § 7.1 Generally
- § 7.2 Conditions
- § 7.3 Conditions—Conditions precedent
- § 7.7 Burden of proof and conditions
- § 7.8 Excusing performance of a condition—To avoid a forfeiture
- § 7.9 Excusing performance of a condition—Waiver of conditions
- § 7.12 Impossibility
- § 7.15 Anticipatory repudiation and breach
- § 7.16 Waiver, estoppel, and ratification [Retitled]

CHAPTER 8. INTERPRETATION

- § 8.1 General principles of interpretation
- § 8.2 Parol evidence rule
- § 8.3 Parol evidence rule—Determining the degree of integration
- § 8.4 Parol evidence rule—The problem of ambiguity
- § 8.5 Parol evidence rule—The problem of ambiguity—The effect of deeming a contract unambiguous
- § 8.6 Parol evidence rule—The problem of ambiguity—The effect of deeming a contract ambiguous
- § 8.7 Parol evidence rule—The problem of ambiguity—The modern trend
- § 8.9 Parol evidence rule—Suggestions for avoiding parol evidence problems—Merger clauses
- § 8.12 Parol evidence rule—Exceptions to application [New]

CHAPTER 9. BREACH

- § 9.2 Definition of breach
- § 9.3 Material breach
- § 9.5 Breach under the Texas Uniform Commercial Code—Material breach doctrine
- § 9.7 Breach under the Texas Uniform Commercial Code—Material breach doctrine—Revocation of acceptance
- § 9.8 Breach under the Texas Uniform Commercial Code—Cure
- § 9.10 Anticipatory repudiation—Generally
- § 9.11 Anticipatory repudiation—What constitutes anticipatory breach
- § 9.15 Anticipatory repudiation—Damages

§ 10.30

§ 10.33

§ 10.37 § 10.40

§ 10.41 § 10.42

§ 10.43.1

 $\S 10.43.2$

Equitable relief

Attorney's fees

| § 9.15.1 | Accrual—Statute of limitations [New] |
|------------------|--|
| § 9.16 | Arbitration—Generally |
| § 9.17 | Arbitration—Substantive law governing arbitration |
| _ | agreements |
| § 9.18 | Arbitration—Requirements |
| § 9.19 | Arbitration—Requirements—Agreement |
| § 9.20 | Arbitration—Requirements—Scope |
| $\S 9.21$ | Arbitration—Stay of judicial proceedings |
| § 9.22 | Judicial review of arbitration awards [New] |
| § 9.23 | Arbitration—Nonsignatories—Retroactivity—Illusory |
| | promises—Employment contracts [New] |
| CHAI | PTER 10. REMEDIES |
| § 10.1 | Generally |
| § 10.2 § 10.3 | Generally—Criteria |
| § 10.3 | Generally—Election of remedies |
| § 10.4 | Limitations on damages—Forseeability |
| § 10.5 | Limitations on damages—Certainty |
| § 10.6 | Limitations on damages—Avoidance through mitigation |
| § 10.7 | Types of damages |
| § 10.8 | Types of damages—Actual, direct, and consequential |
| | damages |
| § 10.9 | Types of damages—Expectancy |
| § 10.10 | Types of damages—Expectancy—Lost profits |
| § 10.13 | Types of damages—Expectancy—Other measurements |
| § 10.14 | Types of damages—Reliance |
| § 10.15 | Types of damages—Reliance—Promissory estoppel |
| § 10.16 | Types of damages—Restitution |
| § 10.17 | Types of damages—Restitution—Unjust enrichment |
| § 10.18 | Types of damages—Restitution—Quantum meruit |
| § 10.19 | Types of damages—Nominal damages |
| § 10.21 | Types of damages—Agreed damages—Liquidated damages |
| § 10.22 | Types of damages—Agreed damages—Other agreed damages |
| § 10.23 | Remedies of particular parties—Seller's remedies |
| § 10.24 | Remedies of particular parties—Buyer's remedies |
| § 10.25 | Specific performance as an alternative to damages |
| § 10.26 | Specific performance as an alternative to |
| 3 10.20 | damages—Availability |
| § 10.27 | Specific performance as an alternative to |
| | damages—Availability—Generally |
| § 10.28 | Specific performance as an alternative to damages— |
| | Availability—Enforceable contract |
| | |

Specific performance as an alternative to damages—Availability—Plaintiff's performance/tender

Equitable relief—Declaratory relief Equitable relief—Rescission Equitable relief—Reformation

Types of agreements—Indemnification [New]

Types of agreements—Guaranty [New]

| 88888 | 10.43.3 10.43.4 10.43.5 10.43.6 10.43.7 10.43.8 10.43.9 | Types of agreements—Settlement [New] Types of agreements—Employment [New] Types of agreements—Warranty [New] Types of agreements—"As is" provisions [New] Types of agreements—Bailments [New] Types of agreements—Force majeure [New] Types of agreements—Sales or leases of real property, restrictive covenants and other real property agreements [New] |
|--|---|--|
| § § § | 10.43.10 10.43.11 10.43.50 10.43.51 10.43.52 | Types of agreements—Options [New] Types of agreements—Insurance [New] Types of agreements—Open account [New] Types of agreements—"Best Efforts" requirements [New] |
| | 10.43.53 10.43.54 | Types of agreements—Notice of damages [New] |
| 88888 | 10.43.55 10.43.56 10.43.57 10.43.58 10.43.59 10.43.60 10.44 | Types of agreements—Suit on debt [New] Types of agreements—Stipulations [New] Attorney-client agreements [New] Consignment agreements [New] Types of agreements—Tax ferret agreements [New] |
| (| 'HAP' | ΓER 11. DISCHARGE |
| | | IER II. DISCHARGE |
| § | 11.3 | Discharge by performance—Substantial |
| _ | | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance |
| § § | 11.3 11.5 11.6 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance Discharge by performance—Substantial performance— Measure of recovery |
| § § | 11.3 11.5 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance—Determination of substantial performance Discharge by performance—Substantial performance— |
| \ \ \ \ \ | 11.3 11.5 11.6 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance Discharge by performance—Substantial performance— Measure of recovery Discharge by performance—Substantial performance— |
| \s\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\ | 11.3 11.5 11.6 11.7 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance Discharge by performance—Substantial performance— Measure of recovery Discharge by performance—Substantial performance— Burden of proof Discharge by performance—Substantial performance—Types of contracts covered by the substantial performance doctrine Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and |
| \$ \$ \$ \$ \$ | 11.3 11.5 11.6 11.7 11.8 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance Discharge by performance—Substantial performance— Measure of recovery Discharge by performance—Substantial performance— Burden of proof Discharge by performance—Substantial performance—Types of contracts covered by the substantial performance doctrine Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by accord and satisfaction Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and |
| \$ \$ \$ \$ \$ \$ \$ \$ | 11.3 11.5 11.6 11.7 11.8 11.13 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance— Discharge by performance—Substantial performance— Measure of recovery Discharge by performance—Substantial performance— Burden of proof Discharge by performance—Substantial performance—Types of contracts covered by the substantial performance doctrine Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by accord and satisfaction Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by compromise and settlement Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement |
| | 11.3 11.5 11.6 11.7 11.8 11.13 11.14 11.15 | Discharge by performance—Substantial performance—Generally Discharge by performance—Substantial performance— Determination of substantial performance— Discharge by performance—Substantial performance— Measure of recovery Discharge by performance—Substantial performance— Burden of proof Discharge by performance—Substantial performance—Types of contracts covered by the substantial performance doctrine Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by accord and satisfaction Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by compromise and settlement Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement Discharge by rescission, modification, or alteration |
| | 11.3 11.5 11.6 11.7 11.8 11.13 11.14 11.15 11.16 11.17 | Discharge by performance—Substantial performance—Determination of substantial performance—Determination of substantial performance—Discharge by performance—Substantial performance—Measure of recovery Discharge by performance—Substantial performance—Burden of proof Discharge by performance—Substantial performance—Types of contracts covered by the substantial performance doctrine Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by accord and satisfaction Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by compromise and settlement Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement Discharge by rescission, modification, or alteration Discharge by rescission, modification, or alteration—Rescission |
| | 11.3 11.5 11.6 11.7 11.8 11.13 11.14 11.15 | Discharge by performance—Substantial performance—Determination of substantial performance—Determination of substantial performance—Discharge by performance—Substantial performance—Measure of recovery Discharge by performance—Substantial performance—Burden of proof Discharge by performance—Substantial performance—Types of contracts covered by the substantial performance—Types of contracts covered by the substantial performance doctrine Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement, and novation—Discharge by accord and satisfaction Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement Discharge by substituted contract, substituted performance, accord and satisfaction, compromise and settlement Discharge by rescission, modification, or alteration Discharge by rescission, modification, or |

| § 11.23 | Discharge by impossibility or |
|-----------|---|
| | impracticability—Impracticability |
| § 11.25 | Discharge by nonoccurrence of a condition—Conditions |
| | precedent and conditions subsequent |
| § 11.25.1 | Discharge by nonoccurrence of a condition—Conditions pre- |
| | cedent and conditions subsequent—Examples of conditions |
| | $\lceil New \rceil$ |

Table of Laws and Rules

Table of Cases

Index