

Contents

Preface to the eleventh edition	v
Preface to the first edition	vii
Table of statutes	xvii
Table of cases	xxiii

- 1 Historical introduction** 1
 - A The mediaeval law 1
 - B The origin of assumpsit 4
 - C Assumpsit and debt 6
 - D The doctrine of consideration 7
 - E The seventeenth and eighteenth centuries 9
 - F The nineteenth century 11
 - G Implied terms 14
- 2 Some factors affecting modern contract law** 17
 - A Continental influence in the nineteenth century 17
 - B Influence of economic theory 18
 - Limits of individualistic theory 19
 - C Inequality of bargaining power 20
 - D The use of standard form contracts 21
 - E Consumer protection 23
 - F Contractual behaviour 23
 - G A law of contract or contracts? 24
 - H The interrelationship of contract and tort 25
- 3 The phenomena of agreement** 26
 - 1 Introduction 26
 - 2 Offer and acceptance: offer 28
 - 3 Offer and acceptance: acceptance 35
 - A The fact of acceptance 36
 - The requirement of certainty 42
 - B The communication of acceptance 47
 - 4 Termination of offer 55
 - A Revocation 55
 - B Lapse of time 60
 - C Failure of a condition subject to which the offer was made 61
 - D Death 61
 - 5 Constructing a contract 63
- 4 Consideration** 67
 - 1 Function and definition 67
 - 2 Consideration—executory, executed and past 70
 - 3 Consideration must move from the promisee 74
 - 4 Sufficiency of consideration 76

x Contents

- A Adequacy of consideration 78
 - B Insufficiency of consideration 85
 - 1 Where a public duty is imposed upon the plaintiff by law 85
 - 2 Where the plaintiff is bound by an existing contractual duty to the defendant 87
 - 3 Compositions with creditors 101
 - 4 Where the plaintiff is bound by an existing contractual duty to a third party 102
- 5 Intention to create legal relations 106**
 - A Domestic agreements 107
 - B Commercial agreements 111
- 6 The contents of the contract 116**
 - 1 Express terms 117
 - A What did the parties say or write? 117
 - B Are the statements of the parties express terms of the contract? 120
 - 2 Implied terms 126
 - A Terms implied by custom 126
 - B Terms implied by statute 129
 - C Terms implied by the courts 134
 - 3 The relative importance of contractual terms 140
 - 4 Excluding and limiting terms 149
 - Statutory provisions 171
 - 1 The scope of the Act 172
 - 2 The arrangement of the Act 173
 - 3 Contract terms made totally ineffective by the Act 174
 - 4 Terms subjected to a test of reasonableness 175
 - 5 The concept of consumer 176
 - 6 The reasonableness test 177
 - a Time for application of tests 177
 - b Burden of proof 178
 - c Factors to be taken into account 178
 - d The relevance of insurance 180
 - 7 Other provisions 181
 - a Anti-evasion clauses 181
 - b Provisions for the avoidance of doubt 183
 - c Other provisions 185
 - 8 Evaluation 187
- 7 Unenforceable contracts 189**
 - 1 History and policy of the Statute of Frauds 190
 - 2 The Statute of Frauds, s 4, and the Law of Property Act 1925, s 40 193
 - A The two types of contract and their interpretation 193
 - 1 Special promise to answer for the debt, default or miscarriage of another person 193
 - 2 Any contract for the sale or other disposition of land or any interest in land 199
 - B The statutory requirements 200
 - 1 The contents of the 'note or memorandum' 201
 - 2 The signature 203
 - 3 The joinder of several documents 204
 - C The effect of non-compliance with the statutory requirements 206
 - 1 At common law 206
 - 2 In equity 209
 - a Underlying basis of equitable doctrine 209

- b The scope of the doctrine 210
 - c The nature of the acts required by the doctrine 210
 - 3 Other rules about form 214
- 8 Mistake 216
 - 1 Introduction 216
 - 2 The two categories of cases 219
 - A Where agreement has been reached, but upon the basis of a common mistake 219
 - 1 Agreements that are void both at common law and in equity 219
 - 2 Agreements in respect of which equity will give relief 228
 - a Agreements that may be set aside 228
 - b Rectification of written agreements 231
 - B Where an apparent agreement is alleged to be vitiated by mutual or unilateral mistake 234
 - 1 Effect of mutual and unilateral mistake at common law 236
 - a Mutual mistake 236
 - b Unilateral mistake 238
 - 2 Effect of mutual and unilateral mistake in equity 245
 - a Mutual mistake 245
 - b Unilateral mistake 247
 - 3 Documents mistakenly signed 248
- 9 Misrepresentation, duress and undue influence 255
 - 1 Misrepresentation 255
 - A Introduction 255
 - B The nature of misrepresentation 257
 - 1 The meaning of representation 258
 - 2 The meaning of inducement 262
 - C Types of misrepresentation 265
 - 1 Fraudulent misrepresentation 265
 - 2 Negligent misstatement at common law 267
 - 3 Negligent misrepresentation under the Misrepresentation Act 1967 271
 - 4 Innocent misrepresentation 273
 - D Remedies for misrepresentation 273
 - 1 Relationship between remedies for breach of contract and remedies for misrepresentation 273
 - 2 Rescission 275
 - 3 Limits to the right of rescission 279
 - a Affirmation of the contract 279
 - b Lapse of time 279
 - c *Restitutio in integrum* impossible 280
 - d Injury to third parties 281
 - e Effect of Misrepresentation Act 1967 282
 - 4 Damages 284
 - a For fraudulent misrepresentation 285
 - b For negligent misstatement at common law 285
 - c Under Misrepresentation Act 1967 286
 - E Review of effects of Misrepresentation Act 1967 287
 - Misrepresentation and exemption clauses 288
 - F Non-disclosure 290
 - 1 Contracts *uberrimae fidei* 290
 - 2 Constructive fraud 294
 - G Relationship between misrepresentation and estoppel 295
 - 2 Duress and undue influence 296

xii *Contents*

- a No special relationship between the contracting parties 302
 - b Where a confidential relationship exists between the parties 303
- 10 **Contracts rendered void by statute 307**
 - A Wagering contracts 307
 - 1 The definition of a wagering contract 307
 - 2 The effect of a wagering contract 311
 - a The effect as between the parties 311
 - b The effect as between principal and agent 316
 - c Securities given in respect of wagering contracts 319
 - d The effect as between lender and borrower 321
 - B Restrictive trading agreements 324
 - History of legislation 324
 - 1 Agreements to which the 1976 Act applies 324
 - 2 Restrictions void because of registration default 327
 - 3 Investigation of registered agreements 327
 - 4 Restrictions void because of adverse declaration by court on grounds of public interest 328
 - C Resale price maintenance agreements 330
- 11 **Contracts illegal by statute or at common law 334**
 - 1 Contracts prohibited by statute 334
 - 2 Contracts illegal at common law on grounds of public policy 341
 - A Introduction 341
 - B The contracts described 346
 - a A contract to commit a crime, a tort or a fraud on a third party 346
 - b A contract that is sexually immoral 349
 - c A contract prejudicial to the public safety 350
 - d A contract prejudicial to the administration of justice 352
 - e A contract liable to corrupt public life 355
 - f A contract to defraud the revenue 356
 - 3 The consequence of illegality 357
 - A Introduction: the relevance of the state of mind of the parties 357
 - B The consequence where the contract is illegal in its inception 359
 - a The contract is void 359
 - b Money paid and chattels or land transferred are irrecoverable 362
 - c A subsequent or collateral contract, which is founded on or springs from an illegal transaction, is illegal and void 368
 - d A foreign contract, if contrary to English public policy, is unenforceable 370
 - C The consequence where a contract lawful in its inception is later illegally exploited or performed 371
 - 4 Proof of illegality 375
- 12 **Contracts void at common law on grounds of public policy 376**
 - 1 The contracts described 376
 - 1 Contracts to oust the jurisdiction of the courts 376
 - 2 Contracts prejudicial to the status of marriage 378
 - 3 Contracts in restraint of trade 380
 - a Restraints accepted by employees 390
 - b Restraints accepted by the vendor of a business 394
 - c Restraints arising from combinations for the regulation of trade relations 395
 - d Restrictions accepted by distributors of merchandise 396
 - 2 The legal consequences 400
 - 1 The contract is void in so far as it contravenes public policy 400

- 2 Money paid or property transferred by one party to the other is recoverable 400
- 3 Subsequent transactions are not necessarily void 402
- 4 The contract, if subject to a foreign law by which it is valid, is enforceable in England 403
- 5 Lawful promises may be severable and enforceable 404

13 Capacity of parties 410

- 1 Infants 410
 - A The effect of contracts made by infants 410
 - 1 Contracts for necessities 411
 - 2 Beneficial contracts of service 415
 - 3 Voidable contracts 417
 - 4 Contracts within the Infants' Relief Act 1874 422
 - a Contracts declared absolutely void by the Act 422
 - b Contracts within the Infants' Relief Act, s 2 425
 - B Delictual liability of infants 427
 - C The equitable doctrine of restitution 428
- 2 Corporations 430
 - The doctrine of *ultra vires* 430
- 3 Persons mentally disordered, and drunkards 434
 - 1 Mental disorder 434
 - 2 Drunkenness 435

14 Privity of contract 437

- 1 The doctrine of privity of contract 437
- 2 Attempts to avoid the doctrine 439
 - A Attempts to confer benefits upon strangers 439
 - B Attempts to impose liabilities upon strangers 448
 - 1 Restrictions upon use 449
 - 2 Restrictions upon price 453

15 Privity of contract under the law of agency 456

- 1 The place of agency in English law 456
- 2 Formation of agency 459
 - A Express appointment 459
 - B Agency by estoppel 460
 - C Ratification 461
 - D Agency of necessity 465
 - E Presumed agency in the case of cohabitation 465
- 3 Position of principal and agent with regard to third parties 466
 - A The agent has authority and is known to be an agent 467
 - 1 His principal is named 467
 - 2 His principal is not named 468
 - Special cases 469
 - Foreign principal 471
 - Where agent is in fact principal 472
 - B The agent has authority in fact but he does not disclose the existence of the agency 473
 - C The effect of a payment to the agent 476
- 4 Unauthorised acts of the agent 479
 - A The position of the principal 479
 - B The position of the agent 483
- 5 Termination of agency 485
 - A Termination by act of the parties 485
 - B Termination by operation of law 489

xiv *Contents*

- 16 The voluntary assignment of contractual rights and liabilities 492**
 - 1 The assignment of contractual rights 492
 - A The assignability of contractual rights 493
 - B Rules that govern assignments, whether statutory or equitable 502
 - 1 Notice 502
 - 2 An assignee takes subject to equities 503
 - 3 Rights incapable of assignment 504
 - C Novation distinguished from assignment 505
 - D Negotiability distinguished from assignability 506
 - 2 The assignment of contractual liabilities 509
- 17 The involuntary assignment of contractual rights and liabilities 512**
- 18 Performance and breach 514**
 - 1 Introduction 514
 - 2 The order of performance 515
 - 3 Excuses for non-performance 516
 - a Agreement 516
 - b Impossibility of performance and frustration 516
 - c Impossibility of performance falling short of discharging frustration 516
 - d Contractual excuses for non-performance 516
 - e Limitation 517
 - 4 Can a party who does not perform perfectly claim payment or performance from the other party? 517
 - a The doctrine of substantial performance 518
 - b Acceptance of partial performance by the promisee 519
 - c Prevention of performance by the promisee 520
 - d Divisible covenants 520
 - 5 Can an innocent party who has paid in advance recover his payment in the event of a failure of perfect performance? 520
 - 6 Can the innocent party terminate the contract? 521
 - a Repudiation 522
 - b Fundamental breach 526
 - 7 What is the effect of a repudiation or a fundamental breach? 528
 - a The innocent party treats the contract as still in force 528
 - b The innocent party treats the contract as at an end 530
 - 8 The effect of discharging the contract for a bad reason, when a good reason also exists 532
 - 9 Some possible special cases 533
 - a Wrongful dismissal of servants 533
 - b Leases 535
 - 10 Contractual provisions for termination 536
 - a Termination for 'minor' breach 537
 - b Termination 'without cause' 537
 - 11 Stipulations as to time 538
 - 12 Tender of performance 541
- 19 Discharge by agreement 543**
 - 1 Bilateral discharge 544
 - 2 Unilateral discharge 551
- 20 Discharge under the doctrine of frustration 554**
 - 1 Nature and rationale of the doctrine 554
 - 2 Operation of the doctrine 559
 - 3 Effect of the doctrine 568
 - a The right to recover money paid 571
 - b The right to recover compensation for partial performance 572

21 Remedies for breach of contract	578
1 Introduction	578
2 Damages	579
A Remoteness of damage and measure of damages	579
B Some special problems	594
1 Effect of tax liability on damages	594
2 Failure to pay money	597
3 Inability to make title to land	598
C Mitigation	598
D Contributory negligence	603
E Liquidated damages and penalties	604
F Deposits, part payments and forfeitures	608
3 Specific performance and injunction	611
4 Extinction of remedies	618
22 Quasi-contract	626
1 Introduction and rationale	626
2 Classification of quasi-contracts	630
A Genuine quasi-contracts	631
1 Money paid by the plaintiff to the defendant's use	631
a The plaintiff must have been constrained to pay the money	631
b The defendant must have been legally liable to pay the money	633
2 Money paid under a mistake of fact	635
3 Money paid in pursuance of an ineffective contract	641
a Total failure of consideration	642
b Money paid in pursuance of a void contract	644
c Money paid in pursuance of an illegal contract	645
4 Money had and received from a third party to the plaintiff's use	646
5 Claims against wrongdoers	648
6 Claims on a <i>quantum meruit</i>	650
B Doubtful quasi-contracts	653
1 Accounts stated	653
2 Judgment debts	654
3 Money due under statute, bye-law or custom	654
4 Claims for necessary goods supplied to persons under incapacity	654
Index	657