

Contents

1	Introduction	1
2	Setting the Scene: Distributive Justice, Corrective Justice, and Monism in Political Philosophy and Contract Law	9
2.1	Distributive and Corrective Justice	9
2.2	Monism in Political Philosophy and in the Law of Contracts	14
3	The Distributive Understanding of Contract Law: Kronman on Contract Law and Distributive Justice	19
3.1	Kronman’s Argument.....	20
3.2	The Failures of the Paretian Principle.....	26
3.2.1	The Structure of a Contract.....	26
3.2.2	The Paretian Principle and Responsibility for Breach of Contract	27
3.2.3	The Paretian Principle, Consent, and Autonomy.....	30
3.3	Final Thoughts	31
4	Libertarianism and the Law of Contracts	33
4.1	The Main Tenets of Nozick’s Libertarianism: The Entitlement Theory	33
4.1.1	The Principle of Justice in Acquisition	34
4.1.2	The Principle of Justice in Transfer	35
4.1.3	The Rectification of Injustice in Holdings	36
4.2	Libertarianism, Contract Law, and the State.....	36
4.2.1	Nozick on Distributive Justice	39
4.3	Why the Wilt Chamberlain Example Doesn’t Work.....	42
4.4	Conclusion	44
5	The Division of Responsibility and Contract Law	45
5.1	A Fair System of Social Cooperation	47
5.2	The Well-Ordered Society	50
5.3	The Political Conception of the Person	50
5.4	The Idea of Free Citizens	51

5.5	The Idea of Equal Citizens.....	52
5.6	The Reasonable and the Rational.....	52
5.7	The Division of Responsibility	53
5.8	Relational Duties, Private Law, and Contract Law	54
5.9	Contract Law and Distributive Justice	56
5.10	Nonrelational Duties	58
5.11	The Original Position and the Veil of Ignorance	59
5.12	The Principles of Justice	61
5.13	The List of Primary Goods	62
5.14	Conclusion	64
6	Explaining Contract Doctrine.....	67
6.1	Introduction.....	67
6.2	The Legal Classification of Obligations.....	68
6.3	A Kantian Account of Private Law	70
6.4	The Nature of Contractual Rights, Duties, and Remedies	75
6.4.1	The Kantian View: <i>Contractual Rights</i> <i>as Rights In Personam</i>	75
6.4.2	Remedies for Breach: Why Expectation and Consequential Damages?	83
6.4.3	Misfeasance, Nonfeasance, and Contractual Remedies	88
7	The Objective Standard of Interaction in Contract Law: The Reasonable Person.....	91
7.1	The Reasonable Person Standard.....	92
7.2	Subjective or Objective Tests?	97
7.3	Some Objections: The Communitarian and Feminist Challenges	99
8	Fuller, Fried, and the Nature of Contractual Rights and Remedies.....	103
8.1	Introduction.....	103
8.2	Against Fuller and Perdue.....	105
8.3	Against Fried.....	109
8.4	Conclusion	114
9	Contracts and Third Parties	115
9.1	The Privity of Contract Rule.....	116
9.2	The Privity Rule, Limits on Freedom of Contract, and the Well-Being of Third Parties from the Rawlsian Perspective.....	118
9.2.1	<i>Donoghue v. Stevenson</i>	118
9.2.2	The Economic Analysis of Law.....	120
9.2.3	The Rawlsian Framework	122

- 9.3 Are Third Parties Bound? If So, How? 126
 - 9.3.1 Introduction..... 126
 - 9.3.2 Economic Loss and the Exclusionary Rule 128
- 9.4 Inducing Breach of Contract..... 134
 - 9.4.1 Before and after Lumley V. Gye 134
 - 9.4.2 Theoretical Discussion..... 138
- 9.5 Contracts for the Benefit of Third Parties 142
 - 9.5.1 Introduction..... 142
 - 9.5.2 Historical Account 144
 - 9.5.3 Current Law 149
 - 9.5.4 Theoretical Discussion..... 152
- 9.6 Final Thoughts 156
- 10 Material Nondisclosure, Corrective Justice, and the Division of Responsibility 157**
 - 10.1 Promises and Precontractual Disclosure: Robust Corrective Justice and Material Disclosure 160
 - 10.2 Ramsay on Nonrobust Corrective Justice and Material Nondisclosure 163
 - 10.3 The Division of Responsibility and Material Nondisclosure..... 166
 - 10.4 Final Thoughts 169
- Acknowledgments 171**
- Bibliography 173**
- Index 179**