

Contents

Table of legislation	xv	
Table of cases	xvii	
1	General themes and issues	1
	FURTHER READING	10
2	Offer and acceptance I: general principles	11
	Two preliminary points	13
	Is there an offer?	16
	Acceptance	26
	Contracting in an electronic world	38
	Battle of the forms	40
	OVERVIEW	42
	FURTHER READING	45
	SELF-TEST QUESTIONS	45
3	Offer and acceptance II: three applications of the general principles	47
	Intention to create legal relations	47
	Signature: the rule in <i>L'Estrange v Graucob</i>	52
	Unilateral mistake	54
	OVERVIEW	67
	FURTHER READING	69
	SELF-TEST QUESTIONS	69
4	Certainty	71
	General principles	73
	Some thorny issues	75
	OVERVIEW	82
	FURTHER READING	83
	SELF-TEST QUESTIONS	84

5	Contracts which fail to materialise	85
	The case law	86
	How <i>should</i> we tackle such situations?	89
	Applying the contractual approach	92
	OVERVIEW	92
	FURTHER READING	94
	SELF-TEST QUESTIONS	94
6	Consideration and estoppel	95
	When is consideration needed?	97
	What counts as consideration?	97
	Examples of legally insufficient consideration	104
	Estoppel	117
	Conclusion: does English law need a requirement of consideration?	126
	OVERVIEW	128
	FURTHER READING	129
	SELF-TEST QUESTIONS	129
7	Privity	131
	Why should we normally allow only parties to a contract to have rights under it?	132
	Cases establishing that a third party cannot acquire rights under a contract	133
	Problems caused by the rule	134
	Judge-made exceptions	135
	Statutory exceptions: the Contracts (Rights of Third Parties) Act 1999	149
	The fate of the judge-made exceptions after the 1999 Act	155
	The imposition of contractual obligations on third parties	157
	OVERVIEW	158
	FURTHER READING	160
	SELF-TEST QUESTIONS	161
8	Terms of the contract I	162
	Distinguishing between terms and mere representations	162
	Implied terms	167
	Incorporation of express terms	174

Interpretation of written contracts	182
OVERVIEW	189
FURTHER READING	190
SELF-TEST QUESTIONS	191
9 Terms of the contract II: exemption clauses and unfair terms	192
Common law principles of construction/interpretation	193
Unfair Contract Terms Act 1977	199
Unfair Terms in Consumer Contracts Regulations 1999	208
Proposals for reform of UCTA and the 1999 Regulations	217
OVERVIEW	218
FURTHER READING	219
SELF-TEST QUESTIONS	219
10 Misrepresentation and non-disclosure	221
What counts as an actionable misrepresentation?	221
Remedies for misrepresentation: rescission	232
Remedies for misrepresentation: damages	238
Exclusion of liability for misrepresentation	246
OVERVIEW	251
FURTHER READING	252
SELF-TEST QUESTIONS	252
11 Duress	254
Introductory points	254
Duress to the person	255
Duress to goods	256
Economic duress	256
'Lawful act duress'	266
OVERVIEW	268
FURTHER READING	268
SELF-TEST QUESTIONS	269
12 Undue influence	270
Introductory points	270

Actual and presumed undue influence	271
Basis and status of presumed undue influence since <i>Etridge</i>	279
Remedies	280
Undue influence in three-party cases	283
OVERVIEW	288
FURTHER READING	289
SELF-TEST QUESTIONS	289
13 Unconscionable bargains	291
Historical background	291
Requirements for relief from unconscionable bargains	293
Unconscionable bargains and third parties	298
Theoretical questions	300
OVERVIEW	302
FURTHER READING	303
SELF-TEST QUESTIONS	303
14 Common mistake	304
Common mistake at law	306
Rescission in equity for common mistake?	317
Rectification	321
OVERVIEW	328
FURTHER READING	331
SELF-TEST QUESTIONS	331
15 Frustration	332
The current test for frustration	333
Was there a radical change in the obligation?	336
Self-induced frustration	346
What are the effects of frustration?	348
OVERVIEW	352
FURTHER READING	354
SELF-TEST QUESTIONS	354

16	Discharge of a contract for breach	355
	Withholding performance	356
	Termination of the contract for breach	360
	Repudiation and anticipatory breach	367
	Innocent party's option to discharge contract	369
	OVERVIEW	375
	FURTHER READING	375
	SELF-TEST QUESTIONS	376
17	Remedies I: compensatory damages	377
	Introduction	377
	1. Has the claimant suffered any loss?	379
	2. Has the claimant suffered an actionable type of loss?	387
	3. Did the breach cause the claimant's loss?	398
	4. Remoteness of damage: was the type of loss (and <i>liability for the</i> type of loss) within the reasonable contemplation of the parties?	399
	5. Has the claimant mitigated his loss?	408
	6. Did the claimant's fault contribute to the loss that he suffered?	411
	OVERVIEW	413
	FURTHER READING	415
	SELF-TEST QUESTIONS	416
18	Remedies II: specific remedies	417
	The action for an agreed sum	418
	Specific performance	427
	Mandatory injunctions	430
	Prohibitory injunctions	431
	Damages in lieu of an injunction	432
	Concluding thoughts	432
	OVERVIEW	435
	FURTHER READING	436
	SELF-TEST QUESTIONS	437

19	Remedies III: other non-compensatory remedies	438
	Why might a non-compensatory remedy be desirable?	438
	Restitution of money for total failure of basis	439
	The user principle	444
	Disgorgement of profit	448
	Punitive damages for breach of contract?	453
	OVERVIEW	456
	FURTHER READING	458
	SELF-TEST QUESTIONS	458
	Bibliography	460
	Index	469



Available to download from the accompanying Online Resource Centre are two additional chapters: 'Incapacity' and 'Illegality and Public Policy'. These chapters provide complete coverage for students who wish to explore these areas of contract law. Both are fully indexed and referenced in the book itself. See www.oxfordtextbooks.co.uk/orc/osullivan5e/.