

# CONTENTS

<i>Contributors</i> .....	iii
<i>Preface</i> .....	v
<i>Acknowledgments</i> .....	ix
<i>Table of Cases</i> .....	xxix
Chapter 1 — An Introduction to the Study of the Law of Contracts.....	1
<b>1. The Classical Theory of Contract</b> .....	2
<b>2. The Intersection of “Private” and “Public” Law</b> .....	3
<b>3. “Freedom of Contract”: Reality and Regulatory Response</b> .....	4
<b>4. “Freedom of Contract”: Common Law Response</b> .....	7
<b>5. What Promises Are Enforceable?</b> .....	9
<b>6. What Remedy for Breach?</b> .....	10
<b>7. Theories of Contract Law</b> .....	11
<b>8. Relational Contracts</b> .....	12
<b>9. Transcending Conceptual Boundaries</b> .....	13
<b>10. A Final Word of Caution</b> .....	15
Chapter 2 — Formation of the Agreement: Offer and Acceptance .....	17
<b>Learning Objectives</b> .....	17
<b>1. Introduction</b> .....	17
<b>2. Offer and Invitation to Treat</b> .....	20
<i>Canadian Dyers Association Ltd. v. Burton</i> .....	20
Note and Questions .....	22
<i>Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd.</i> .....	23
Note and Questions .....	25
<i>Carlill v. Carbolic Smoke Ball Co.</i> .....	28
Note and Questions .....	32
<i>Goldthorpe v. Logan</i> .....	33
Notes and Questions .....	35
<i>R. v. Ron Engineering &amp; Construction (Eastern) Ltd.</i> .....	36
Notes.....	38
<i>M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.</i> .....	39
Notes.....	47
<b>3. Communication of Offer</b> .....	48
<i>Williams v. Carwardine</i> .....	48

<i>R. v. Clarke</i> .....	50
Notes and Questions .....	53
<b>4. Acceptance</b> .....	53
<i>Livingstone v. Evans</i> .....	53
Note and Questions .....	55
<i>Butler Machine Tool Co. v. Ex-Cell-O Corp.</i> .....	56
Question .....	58
<i>Tywood Industries Ltd. v. St. Anne-Nackawic Pulp &amp; Paper Co. Ltd.</i> .....	58
Notes and Questions .....	59
<i>ProCD v. Matthew Zeidenberg and Silken Mountain Web Services, Inc.</i> .....	61
Questions .....	66
<i>Dawson v. Helicopter Exploration Co.</i> .....	67
<i>Felthouse v. Bindley</i> .....	73
Notes and Questions .....	74
<i>Saint John Tug Boat Co. v. Irving Refinery Ltd.</i> .....	76
<i>Eliason v. Henshaw</i> .....	81
Questions .....	82
<b>5. Communication of Acceptance</b> .....	83
<b>(a) Mailed Acceptances</b> .....	83
<i>Household Fire &amp; Carriage Accident Insurance Co. v. Grant</i> .....	83
Notes and Questions .....	86
<i>Holwell Securities Ltd. v. Hughes</i> .....	86
Question .....	89
<b>(b) Instantaneous Methods of Communication</b> .....	89
<i>Brinkibon Ltd. v. Stahag Stahl und Stahlwarenhandels-gesellschaft mbH</i> .....	89
Notes and Questions .....	92
<i>Rudder v. Microsoft Corp.</i> .....	94
Notes .....	98
<b>6. Termination of Offer</b> .....	99
<b>(a) Revocation</b> .....	99
<i>Dickinson v. Dodds</i> .....	99
Notes and Questions .....	101
<i>Byrne v. Van Tienhoven</i> .....	103
Note .....	104
<i>Errington v. Errington and Woods</i> .....	104
Questions .....	106
<b>(b) Lapse</b> .....	106
<i>Barrick v. Clark</i> .....	106
Notes and Questions .....	110
Chapter 3 — Formation of the Agreement: Certainty of Terms .....	113
<b>Learning Objectives</b> .....	113
<b>1. Introduction</b> .....	113
<b>2. Vagueness</b> .....	116
<i>R. v. CAE Industries Ltd.</i> .....	116

Note.....	121
<b>3. Incomplete Terms.....</b>	<b>121</b>
<i>May &amp; Butcher Ltd. v. R.</i> .....	122
Note.....	124
<i>Hillas &amp; Co. v. Arcos Ltd.</i> .....	124
Note.....	129
<i>Foley v. Classique Coaches Ltd.</i> .....	129
Notes and Questions.....	131
<b>4. Agreements to Negotiate.....</b>	<b>134</b>
<i>Empress Towers Ltd. v. Bank of Nova Scotia</i> .....	136
<i>Mannpar Enterprises Ltd. v. Canada</i> .....	138
Note and Questions.....	142
A Comment on Developments in the Enforcement of Agreements to Negotiate in Good Faith.....	143
<b>5. Anticipation of Formalization.....</b>	<b>149</b>
<i>Bawitko Investments Ltd. v. Kernels Popcorn Ltd.</i> .....	150
Notes.....	155
Chapter 4 — The Enforcement of Promises.....	157
<b>Learning Objectives</b> .....	<b>157</b>
<b>1. Introduction</b> .....	<b>157</b>
(a) <b>Promises Enforced as Contracts</b> .....	158
(b) <b>Promises Enforced as Deeds</b> .....	159
(c) <b>Promises Enforced by Way of Estoppel</b> .....	159
<b>2. Exchange and Bargains</b> .....	<b>159</b>
<i>The Governors of Dalhousie College at Halifax v. The Estate of Arthur             Boutilier, Deceased</i> .....	159
<i>Brantford General Hospital Foundation v. Marquis Estate</i> .....	165
<i>Wood v. Lucy, Lady Duff-Gordon</i> .....	169
Notes and Question.....	170
<b>3. Past Consideration</b> .....	<b>170</b>
<i>Eastwood v. Kenyon</i> .....	170
Question.....	172
<i>Lampleigh v. Brathwait</i> .....	172
Notes and Questions.....	173
<b>4. Consideration Must Be of Value in the Eyes of the Law</b> .....	<b>173</b>
<i>Thomas v. Thomas</i> .....	173
Notes and Questions.....	175
<b>5. Bona Fide Compromises of Disputed Claims</b> .....	<b>175</b>
<i>B. (D.C.) v. Arkin</i> .....	175
Note.....	178
<b>6. Pre-Existing Legal Duty</b> .....	<b>179</b>

<b>(a) Introduction</b> .....	179
<b>(b) Public Duty</b> .....	179
Question .....	180
<b>(c) Duty Owed to a Third Party</b> .....	180
<i>Pao On v. Lau Yiu Long</i> .....	180
<b>(d) Duty Owed to the Promisor — The Traditional Position</b> .....	183
(i) Promises to Pay or Provide More .....	184
<i>Stilk v. Myrick</i> .....	184
Note.....	185
<i>Gilbert Steel Ltd. v. University Const. Ltd.</i> .....	185
Notes.....	189
(ii) Promises to Accept Less .....	189
(A) Accord and Satisfaction.....	189
<i>Foakes v. Beer</i> .....	190
Notes and Questions .....	192
<i>Foot v. Rawlings</i> .....	194
Note and Question .....	196
(B) Statute.....	196
<i>Judicature Act</i> .....	196
Notes and Questions .....	196
<b>(e) Duty Owed to the Promisor — Judicial Reform</b> .....	198
<i>Nav Canada v. Greater Fredericton Airport Authority Inc.</i> .....	198
Note and Questions .....	203
<i>Rosas v. Toca</i> .....	203
Note and Questions .....	213
<b>7. Promissory Estoppel</b> .....	214
<i>Hughes v. Metropolitan Railway Company</i> .....	214
<i>Central London Property Trust Ltd. v. High Trees House Ltd.</i> .....	215
Note and Questions .....	218
<b>(a) The Nature of the Representation</b> .....	218
<i>John Burrows Ltd. v. Subsurface Surveys Ltd.</i> .....	218
Note and Questions .....	220
<b>(b) The Equities</b> .....	221
<i>D. &amp; C. Builders Ltd. v. Rees</i> .....	221
<b>(c) The Reliance</b> .....	224
<i>W.J. Alan &amp; Co. v. El Nasr Export &amp; Import Co.</i> .....	224
Questions .....	228
<i>Société Italo-Belge Pour le Commerce et l'industrie S.A. v. Palm and</i> <i>Vegetable Oils (Malaysia) SDN BHD; the Post Chaser</i> .....	228
Notes and Questions .....	231
<b>(d) Sword or Shield?</b> .....	233
<i>Combe v. Combe</i> .....	233
Notes and Questions .....	235
<i>Petridis v. Shabinsky</i> .....	235
Questions .....	238
<i>M. (N.) v. A. (A.T.)</i> .....	238
Notes and Questions .....	243
<b>8. Intention to Create Legal Relations</b> .....	244

<b>(a) Introduction</b> .....	244
<b>(b) Family Arrangements</b> .....	244
<i>Balfour v. Balfour</i> .....	244
Notes and Questions .....	247
<b>(c) Commercial Arrangements</b> .....	248
<i>Rose and Frank Co. v. J.R. Crompton and Bros. Ltd.</i> .....	248
Notes and Questions .....	249
<i>Toronto Dominion Bank v. Leigh Instruments Ltd. (Trustee of)</i> .....	250
Notes .....	253
<b>9. Formality: Promises under Seal</b> .....	254
<i>Royal Bank v. Kiska</i> .....	254
Notes .....	256
<b>10. Formality: The Requirement of Writing</b> .....	257
<b>(a) Introduction</b> .....	257
<b>(b) Categories of Contracts under the Statute</b> .....	259
(i) Contracts to Charge an Executor or Administrator on a Special Promise to Answer Damages Out of His Own Estate .....	260
Note .....	260
(ii) Contracts Made upon Consideration of Marriage .....	260
Note .....	260
(iii) Contracts to Answer for the Debt, Default or Miscarriage of Another Person .....	260
Note .....	261
(iv) Contracts Not to Be Performed Within a Year .....	261
Note .....	262
(v) Contracts for the Sale or an Interest in Land .....	262
Note .....	262
<b>(c) Effects of Non-Compliance</b> .....	263
<b>(d) The Requirement of a Sufficient Note or Memorandum</b> .....	263
(i) Form of the Note or Memorandum .....	263
(ii) Contents of the Note or Memorandum .....	264
<i>Dynamic Transport Ltd. v. O.K. Detailing Ltd.</i> .....	264
(iii) The Requisite Signature .....	266
(iv) Joinder of Documents .....	267
<b>(e) Electronic Contracts</b> .....	267
(i) Written Memoranda in Electronic Form at Common Law .....	267
(ii) Written Memoranda in Electronic Form under Electronic Commerce Legislation .....	267
Note .....	268
(iii) Signatures in Electronic Form .....	268
Notes .....	269
<b>(f) Part Performance</b> .....	269
<i>Deglman v. Guaranty Trust Co.</i> .....	269
Notes .....	273
<i>Thompson v. Guaranty Trust Co.</i> .....	274
Notes and Questions .....	280
<i>Lensen v. Lensen</i> .....	280
Notes .....	282

Chapter 5 — Privity of Contract.....	285
<b>Learning Objectives</b> .....	285
<b>1. Introduction</b> .....	285
<b>2. The History of the Doctrine of Privity and Third Party Beneficiaries</b> .....	285
<i>Provender v. Wood</i> .....	286
<i>Tweddle v. Atkinson</i> .....	286
<i>Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge &amp; Co. Ltd.</i> .....	287
Notes and Questions.....	290
<b>3. Ways in Which a Third Party May Acquire the Benefit</b> .....	291
<b>(a) Statute</b> .....	291
Note.....	293
<b>(b) Specific Performance</b> .....	293
<i>Beswick v. Beswick</i> .....	293
<i>Beswick v. Beswick</i> .....	295
Questions .....	297
<b>(c) Trust</b> .....	297
<i>Vandepitte v. Preferred Accident Insurance Co.</i> .....	297
<b>(d) Agency</b> .....	301
<i>McCannell v. Mabee McLaren Motors Ltd.</i> .....	302
<i>New Zealand Shipping Co. Ltd. v. A.M. Satterthwaite &amp; Co. Ltd.</i> .....	304
Notes and Question .....	308
<b>(e) Employment</b> .....	309
<i>London Drugs Ltd. v. Kuehne &amp; Nagel International Ltd.</i> .....	309
Notes and Questions.....	319
<b>(f) The Principled Exception</b> .....	319
<i>Fraser River Pile &amp; Dredge Ltd. v. Can-Dive Services Ltd.</i> .....	319
Notes and Questions.....	324
<b>4. Privity and Contract Theory</b> .....	324
Chapter 6 — Contingent Agreements .....	327
<b>Learning Objectives</b> .....	327
<b>1. Introduction</b> .....	327
<b>2. Intention, Certainty, and Consideration</b> .....	330
<i>Wiebe v. Bobsien</i> .....	332
Notes.....	338
<i>Wiebe v. Bobsien</i> .....	338
Notes and Questions.....	340
<b>3. Reciprocal Subsidiary Obligations</b> .....	341
<i>Dynamic Transport Ltd. v. O.K. Detailing Ltd.</i> .....	343
Notes and Questions.....	345
<b>(a) Remedies for Breach of Subsidiary Obligations</b> .....	346
<i>Eastwalsh Homes Ltd. v. Anatal Developments Ltd.</i> .....	347
Note.....	349

<b>4. Unilateral Waiver</b> .....	350
<i>Turney v. Zhilka</i> .....	350
Notes.....	352
 Chapter 7 — Representations and Terms; Classifications and Consequences.....	 357
<b>Learning Objectives</b> .....	357
<b>1. Introduction</b> .....	357
<b>2. Misrepresentation and Rescission</b> .....	358
<i>Redgrave v. Hurd</i> .....	359
Questions.....	363
<i>Smith v. Land and House Property Corp.</i> .....	363
Notes and Questions.....	364
<i>Bank of British Columbia v. Wren Developments Ltd.</i> .....	365
Note and Questions.....	367
<i>Kupchak v. Dayson Holdings Ltd.</i> .....	368
Notes and Questions.....	375
<b>3. Representations and Terms</b> .....	376
<i>Heilbut, Symons &amp; Co. v. Buckleton</i> .....	376
Note and Questions.....	380
<i>Dick Bentley Productions Ltd. v. Harold Smith (Motors) Ltd.</i> .....	381
Questions.....	383
<i>Leaf v. International Galleries</i> .....	383
Questions.....	387
<b>4. Statutory Reform</b> .....	387
Ontario Law Reform Commission, <i>Report on Amendment of the Law</i> <i>of Contract</i> .....	388
Note and Questions.....	391
<i>Consumer Protection Act</i> .....	391
Notes and Questions.....	398
<b>5. Concurrent Liability in Contract and Tort</b> .....	399
<i>Sodd Corp. v. N. Tassis</i> .....	400
Notes and Questions.....	402
<i>BG Checo International Ltd. v. British Columbia Hydro &amp; Power</i> <i>Authority</i> .....	403
Note and Question.....	412
<b>6. The Parol Evidence Rule</b> .....	413
<b>(a) The Scope and Rationale of the Rule</b> .....	413
<i>Zell v. American Seating Co.</i> .....	415
Notes and Questions.....	420
<i>Hawrish v. Bank of Montreal</i> .....	422
Note and Questions.....	425
<i>Bauer v. Bank of Montreal</i> .....	425
Notes and Questions.....	427
<i>J. Evans &amp; Son (Portsmouth) Ltd. v. Merzario (Andrea) Ltd.</i> .....	427

Notes and Questions .....	430
<i>Gallen v. Allstate Grain Co.</i> .....	433
Note and Questions .....	441
<b>(b) Statutory Modification of the Parol Evidence Rule</b> .....	442
<i>Trade Practice Act</i> .....	442
Notes and Questions .....	442
<b>7. Classification of Terms</b> .....	447
<i>Hong Kong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd.</i> .....	448
Notes and Questions .....	453
<i>Wickman Machine Tool Sales Ltd. v. L. Schuler A.G.</i> .....	456
Questions .....	461
<b>8. The Performance Obligation: The Duty to Perform in Good Faith</b> .....	462
<i>Bhasin v. Hrynew</i> .....	462
Notes and Questions .....	472
<b>9. Remedies of the Parties in Default</b> .....	473
<i>Fairbanks Soap Co. v. Sheppard</i> .....	475
Notes and Questions .....	478
<i>Sumpter v. Hedges</i> .....	479
Questions .....	480
<i>Howe v. Smith</i> .....	480
Note and Questions .....	481
<i>Stevenson v. Colonial Homes Ltd.</i> .....	482
Questions .....	485
Chapter 8 — Standard Form Contracts and Exclusion Clauses .....	487
<b>Learning Objectives</b> .....	487
<b>1. Introduction</b> .....	487
<b>2. Judicial Control of Standard Form Contracts and Exclusion Clauses</b> .....	488
<i>Trebilcock, The Common Law of Restraint of Trade</i> .....	489
Use of Exclusion Clauses .....	493
<b>3. Incorporation</b> .....	494
<b>(a) Unsigned Documents</b> .....	494
<i>Thornton v. Shoe Lane Parking Ltd.</i> .....	494
Note .....	498
<i>Interfoto Picture Library Ltd. v. Stiletto Visual Programmes Ltd.</i> .....	499
<i>McCutcheon v. David MacBrayne Ltd.</i> .....	504
Notes and Question .....	507
<b>(b) Signed Documents</b> .....	508
<i>Tilden Rent-A-Car Co. v. Clendenning</i> .....	508
<i>Karroll v. Silver Star Mountain Resorts Ltd.</i> .....	512
Notes .....	517
<b>4. Principles of Contractual Interpretation</b> .....	520
<b>(a) Implied Terms</b> .....	520
<i>Machtinger v. Hoj Industries Ltd.</i> .....	521



<b>(b) Ambiguity</b> .....	524
<i>Scott v. Wawanese Mutual Insurance Co.</i> .....	524
<b>(c) Context and the Factual Matrix</b> .....	528
<i>Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.</i> .....	530
Note .....	533
<b>(d) Strict Construction</b> .....	533
<b>5. The Doctrine of Fundamental Breach</b> .....	535
<i>Tercon Contractors Ltd. v. British Columbia (Ministry of Transportation     and Highways)</i> .....	537
Notes and Questions .....	547
Chapter 9 — Mistake .....	549
<b>Learning Objectives</b> .....	549
<b>1. Introduction</b> .....	549
Note .....	550
<b>2. Both Parties Mistakenly Believe They Are in Agreement</b> .....	551
<i>Staiman Steel Ltd. v. Commercial &amp; Home Builders Ltd.</i> .....	552
<b>3. Unilateral Mistakes as to Terms</b> .....	554
<b>(a) Distinguishing Mistakes as to Terms and Mistaken Assumptions</b> .....	554
<i>Smith v. Hughes</i> .....	554
Question .....	559
<b>(b) “Snapping Up” a Mistaken Offer</b> .....	559
Notes and Question .....	561
<b>(c) Mistakes in Tender Bids</b> .....	561
<i>R. v. Ron Engineering &amp; Construction (Eastern) Ltd.</i> .....	562
Notes and Questions .....	566
<b>4. Agreements Made under Mistaken Assumptions</b> .....	568
<b>(a) Common Law</b> .....	568
<i>Bell v. Lever Brothers Ltd.</i> .....	568
Question .....	573
<i>McRae v. Commonwealth Disposals Commission</i> .....	573
Notes and Questions .....	579
<b>(b) Equity</b> .....	579
<i>Solle v. Butcher</i> .....	580
Notes .....	582
<i>Great Peace Shipping v. Tsavliris Salvage</i> .....	583
Note and Questions .....	588
<i>Miller Paving Ltd. v. B. Gottardo Construction Ltd.</i> .....	589
Notes .....	592
<b>5. Mistaken Identity</b> .....	593
<i>Shogun Finance Ltd. v. Hudson</i> .....	594
Note and Question .....	600
<b>6. Documents Mistakenly Signed: Non Est Factum</b> .....	600
<i>Saunders v. Anglia Building Society</i> .....	602

	<i>Marvco Color Research Ltd. v. Harris</i> .....	604
	Notes.....	612
<b>7. Rectification</b> .....		613
	<i>Sylvan Lake Golf &amp; Tennis Club Ltd. v. Performance Industries Ltd.</i> .....	614
	Notes.....	623
	<i>Canada (Attorney General) v. Fairmont Hotels Inc.</i> .....	623
	Note.....	630
Chapter 10 — Frustration.....		633
	<b>Learning Objectives</b> .....	633
<b>1. Introduction</b> .....		633
	Collins, <i>The Law of Contract</i> .....	635
	Posner, <i>Economic Analysis of Law</i> .....	636
	Trebilcock, <i>The Limits of Freedom of Contract</i> .....	638
<b>2. Development and Application of the Doctrine</b> .....		639
	<i>Paradine v. Jane</i> .....	639
	Note and Question .....	639
	<i>Taylor v. Caldwell</i> .....	640
	Notes and Questions .....	642
	<i>Claude Neon General Advertising Ltd. v. Sing</i> .....	643
	Notes and Questions .....	645
	<i>Davis Contractors Ltd. v. Fareham U.D.C.</i> .....	645
	Notes.....	649
	<i>Capital Quality Homes Ltd. v. Colwyn Construction Ltd.</i> .....	650
	Question and Notes .....	652
	<i>Victoria Wood Development Corp. v. Ondrey</i> .....	652
	Question .....	653
	<i>KBK NO. 138 Ventures Ltd. v. Canada Safeway Ltd.</i> .....	654
	Note.....	657
	<i>Kesmat Invt. Inc. v. Indust. Machinery Co. &amp; Canadian Indemnity Co.</i> .....	657
	Notes and Questions .....	658
<b>3. A Restatement</b> .....		661
	<i>Edwinton Commercial Corporation and Another v. Tsavliris Russ</i> <i>(Worldwide Salvage and Towage) Ltd. The Sea Angel</i> .....	661
	Note and Questions .....	666
<b>4. Self-Induced Frustration</b> .....		668
	<i>Maritime National Fish Ltd. v. Ocean Trawlers Ltd.</i> .....	668
	Notes and Questions .....	669
<b>5. Should the Doctrine of Frustration Be Expanded: Commercial Impracticality and Social Force Majeure?</b> .....		670
	Notes and Questions .....	671
	Wilhelmsson, “‘Social Force Majeure’ — A New Concept in Nordic Consumer Law” .....	673
	Questions .....	674

<b>6. Anticipating the Unforeseeable: Force Majeure Clauses</b> .....	674
<i>Atlantic Paper Stock Ltd. v. St. Anne-Nackawic Pulp &amp; Paper Co.</i> .....	675
Notes and Questions .....	678
<b>7. Effect of Frustration</b> .....	680
Ontario Law Reform Commission, <i>Report on Amendment of the Law of Contract</i> .....	680
Notes and Questions .....	683
Chapter 11 — The Protection of Weaker Parties .....	685
<b>Learning Objectives</b> .....	685
<b>1. Introduction</b> .....	685
<b>2. Duress</b> .....	686
<i>Greater Fredericton Airport Authority Inc. v. NAV Canada</i> .....	686
<b>3. Undue Influence</b> .....	699
<i>Geffen v. Goodman Estate</i> .....	701
Notes and Questions .....	708
<i>Royal Bank of Scotland Plc v. Etridge (No. 2)</i> .....	709
Notes and Questions .....	718
<b>4. Unconscionability</b> .....	718
<b>(a) The Traditional Doctrine</b> .....	718
<i>Morrison v. Coast Finance Ltd.</i> .....	719
<i>Marshall v. Can. Permanent Trust Co.</i> .....	723
Questions .....	725
<b>(b) A Wider View</b> .....	726
<i>Lloyds Bank v. Bundy</i> .....	726
<i>Harry v. Kreutziger</i> .....	732
<b>(c) The Scope of the Principle</b> .....	735
Tiplady, “The Judicial Control of Contractual Unfairness” .....	737
Note .....	738
<b>(d) Unconscionability Legislation</b> .....	739
<i>Unconscionable Transactions Relief Act</i> .....	739
Notes and Question .....	740
<b>5. Incapacity</b> .....	742
<b>(a) Infancy</b> .....	742
Ontario Law Reform Commission, <i>Report on Amendment of the Law of Contract</i> .....	742
Notes .....	743
<b>(b) Mental Incompetence</b> .....	744
<i>Hart v. O’Connor</i> .....	744
Notes and Question .....	748
Chapter 12 — Illegality and Public Policy .....	749
<b>Learning Objectives</b> .....	749

1. Introduction .....	749
2. Contracts Contrary to Public Policy at Common Law .....	750
(a) Restraint of Trade .....	750
<i>Shafron v. KRG Insurance Brokers (Western) Inc.</i> .....	750
Notes .....	759
(b) Immoral Contracts .....	762
(c) Surrogacy Agreements .....	764
3. Effects of Illegality .....	767
<i>Still v. Minister of National Revenue</i> .....	768
Notes and Questions .....	781
Chapter 13 — Remedies .....	785
Learning Objectives .....	785
1. Introduction .....	785
2. Damages: The Interests Protected .....	786
Holmes, <i>The Path of the Law</i> .....	787
Posner, <i>Economic Analysis of Law</i> .....	787
Note .....	788
Fuller and Perdue, <i>The Reliance Interest in Contract Damages</i> .....	789
(a) The Expectation Interest .....	798
(b) The Reliance Measure of Damages .....	799
<i>McRae v. Commonwealth Disposals Comm.</i> .....	799
Note and Questions .....	803
<i>Bowlay Logging Ltd. v. Domtar Ltd.</i> .....	804
Note and Question .....	807
<i>Sunshine Vacation Villas Ltd. v. Governor and Company of Adventurers</i> <i>of England Trading into Hudson's Bay</i> .....	808
Questions .....	811
(c) The Restitution Measure of Damages .....	812
<i>Attorney-General v. Blake (Jonathan Cape Ltd. Third Party)</i> .....	812
Notes and Questions .....	821
3. Damages: The Boundaries of Recovery .....	821
(a) Circumscribing the Zone of Protected Interests .....	821
(i) Loss of a Chance .....	822
<i>Chaplin v. Hicks</i> .....	822
Questions .....	823
(ii) Cost of Completion v. Difference in Value .....	824
<i>Groves v. John Wunder Co.</i> .....	824
Notes and Question .....	829
Posner, <i>Economic Analysis of Law</i> .....	829
<i>Nu-West Homes Ltd. v. Thunderbird Petroleums Ltd.</i> .....	830
Notes and Questions .....	832
(iii) General Damages for Mental Distress .....	833
<i>Fidler v. Sun Life Assurance Co. of Canada</i> .....	833
Notes .....	842

<i>Jarvis v. Swans Tours</i> .....	843
Question .....	845
(iv) Aggravated and Punitive Damages .....	846
<i>Vorvis v. Insurance Corp. of British Columbia</i> .....	846
<i>Honda Canada Inc. v. Keays</i> .....	854
Notes and Questions .....	865
<i>RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc.</i> .....	866
<i>Whiten v. Pilot Insurance Co.</i> .....	869
Note and Question .....	872
<b>(b) Certainty, Causation and Remoteness</b> .....	872
(i) Certainty .....	873
(ii) Causation .....	873
<i>Hodgkinson v. Simms</i> .....	873
Notes and Questions .....	882
(iii) Remoteness .....	882
<i>Hadley v. Baxendale</i> .....	883
Note and Question .....	885
<i>Victoria Laundry (Windsor) Ltd. v. Newman Indust. Ltd.</i> .....	885
Questions .....	889
<i>Scyruv v. Economy Tractor Parts Ltd.</i> .....	889
Note and Questions .....	891
<i>Koufos v. Czarnikow (C.) (The Heron II)</i> .....	892
Note and Questions .....	895
<b>(c) Mitigation</b> .....	896
<i>Asamera Oil Corp. v. Sea Oil &amp; General Corp.</i> .....	896
Note and Questions .....	904
<b>(d) Time of Measurement of Damages</b> .....	905
<i>Semelhago v. Paramadevan</i> .....	905
Notes .....	910
<i>Southcott Estates Inc. v. Toronto Catholic District School Board.</i> .....	911
<i>Evans v. Teamsters Local Union No. 31</i> .....	916
Note .....	920
<b>(e) Liquidated Damages, Deposits and Forfeitures</b> .....	920
<i>Shatilla v. Feinstein</i> .....	921
Questions .....	924
<i>H.F. Clarke Ltd. v. Thermidaire Corp.</i> .....	925
Notes and Questions .....	932
<i>J.G. Collins Insurance Agencies Ltd. v. Elsley</i> .....	933
Note and Questions .....	934
<i>Stockloser v. Johnson</i> .....	935
Notes and Questions .....	938
<i>Super Save Disposal Ltd. v. Blazin Auto Ltd.</i> .....	939
<b>4. Equitable Remedies</b> .....	942
<b>(a) Specific Performance</b> .....	942
<i>John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.</i> .....	944
Notes and Questions .....	946
<b>(b) Defences to Actions for Specific Performance</b> .....	948
(i) Mutuality of Remedy .....	948
(ii) Misrepresentation and Mistake .....	949

(iii) Conduct of the Plaintiff.....	949
(iv) Hardship.....	949
(v) Other Equitable Defences .....	950
<b>(c) Injunctions .....</b>	<b>950</b>
<b>(d) Contracts of Personal Service.....</b>	<b>950</b>
<i>Warner Bros. Pictures Inc. v. Nelson .....</i>	<i>951</i>
Note and Questions .....	956
<b>(e) Interim and Interlocutory Injunctions .....</b>	<b>956</b>
<i>Zipper Transportation Services Ltd. v. Korstrom .....</i>	<i>957</i>
<i>Zipper Transportation Services Ltd. v. Korstrom .....</i>	<i>958</i>
Note and Questions .....	961