

# CONTENTS

<i>Table of Cases</i>	xiii
<i>Table of International Treaties, Conventions, and Other Instruments</i>	xliv
<i>Table of European Union Legislation</i>	xlvii
<i>Table of National Legislation</i>	xlix
<b>1. Formation and the Concept of Agreement</b>	
A. Introduction	1.01
B. The Objective Theory of Contract and Formation	1.07
C. The Concept of Agreement	1.17
D. Contract Formation: An Issue of Fact or Law?	1.20
<b>2. Offers and Invitations to Treat</b>	
A. General Considerations	2.01
B. Identifying an Offer	2.14
What constitutes an offer	2.14
Requirements of a valid offer	2.21
Commitment	2.22
Certainty of terms	2.32
Specified addressees	2.39
Conclusion	2.45
C. Communication of Offer	2.51
<b>3. Termination and Revocation of Offers</b>	
A. Termination	3.01
Introduction	3.01
Lapse of time	3.02
Delay in the communication of an offer	3.11
Death of the offeror or offeree	3.14
Failure of a contingency	3.16
Rejection and counter-offer	3.18
B. Revocation of Offers	3.26
General rule	3.26
Need for communication	3.27
Practical problems with the general principle	3.31
Circumventing the general principle	3.38
Estoppel and the protection of reliance	3.64
The two-contract approach	3.74
Modification of the rules applying to unilateral contracts	3.79

<b>4. Acceptance</b>	
A. Introduction	4.01
B. Objective Theory	4.04
C. Manner of Acceptance	4.09
Prescribed manner of acceptance	4.09
No prescribed manner of acceptance	4.17
Acceptance by conduct	4.19
Time of acceptance	4.23
D. Who May Accept an Offer?	4.27
E. Offeree Must Accept with Knowledge of the Offer	4.30
F. Offeree Must Intend to Accept Offer	4.33
G. Correspondence with Offer	4.40
H. Acceptance Must Be Unequivocal	4.52
I. Acceptance Must Be Communicated	4.54
Introduction	4.54
Offeror waiving need for communication	4.57
J. Silence and Acceptance	4.62
K. Instantaneous Communications and the Postal Acceptance Rule	4.91
Instantaneous communications	4.91
The postal acceptance rule	4.99
L. Standard Form Contracting and the ‘Battle of the Forms’	4.122
The ‘battle of the forms’ defined	4.122
The application of contract law principles to a battle of the forms	4.123
A different approach?	4.134
Conclusions	4.138
<b>5. Auctions and Tenders</b>	
A. Auctions	5.06
B. Reserve Prices	5.10
C. Tenders	5.19
<b>6. Problems of Intention and Consideration in Online Transactions</b>	
A. Introduction	6.01
B. Intention and Consideration	6.07
C. Is There an Offer?	6.13
Another challenge to objectivity—hypertext	6.14
What are the contents of the offer/contract?	6.15
D. Is There Acceptance?	6.20
Method of acceptance	6.21
Effectiveness of acceptance	6.27

<b>7. Letters of Intent</b>	
A. Cases Where the Letters of Intent Do Not Create a Contract	7.17
B. Cases Where Letters of Intent Do Create a Contract	7.26
C. Cases Where the Letters of Intent Have Some Legal Effect	7.58
Letters of intent followed by performance	7.58
D. Letters of Comfort	7.60
E. Agreements Imposing Obligations as to the Course of the Negotiations	7.68
<b>8. Practical Aspects of Letters of Intent</b>	
A. Letters of Intent—Some Practical Considerations	8.01
B. Possible Ways of Delaying Legal Effect of Letters of Intent	8.07
C. Letters of Intent and Partially Completed Negotiations	8.11
D. Agreements to Negotiate in Good Faith	8.16
E. Refusal to Negotiate	8.18
F. Starting Work	8.20
<b>9. Conditional Contracts</b>	
A. Introduction	9.01
B. The ‘Construction’ of ‘Subject to’ Clauses	9.07
C. ‘Subject to Contract’	9.15
Introduction	9.15
The legal effect of a ‘subject to contract’ provision	9.16
No intention to be bound	9.22
Intention to be immediately bound and to perform when the time for performance accrues	9.42
Intention to be immediately bound but performance is suspended until a formal contract is executed	9.55
Intention to be immediately bound but contract to be replaced with a more formal document	9.61
D. ‘Subject to Finance’	9.65
Introduction	9.65
The efficacy of ‘subject to finance’ clauses	9.67
The obligations of the buyer	9.78
E. Other ‘Subject to’ Clauses	9.91
The obligations of the parties	9.96
F. Time for the Occurrence of Contingency	9.114
G. Waiver	9.116
H. The Consequences of the Failure of a Condition	9.134

<b>10. Denial of Legally Binding Effect</b>	
A. Intention to Contract	10.01
Introduction	10.01
The use of presumptions	10.02
The presumptions and threshold intention	10.13
Consideration and intention to contract	10.18
Family and social agreements	10.20
Commercial agreements	10.34
B. Letters of Comfort	10.59
<b>11. Certainty and Completeness</b>	
A. Introduction	11.01
Formation and the relevance of certainty and completeness	11.01
Intention to contract	11.05
Overriding concern and principle	11.06
B. Uncertainty	11.14
Introduction	11.14
Uncertain terms and illusory terms	11.20
Uncertainty and ambiguity	11.21
C. Incompleteness	11.30
D. Agreements to Agree and Agreements to Negotiate	11.33
Agreements to agree	11.33
Agreements to negotiate	11.59
E. Methods by Which the Courts and the Parties Resolve	
Uncertainty and Incompleteness	11.78
Introduction	11.78
Standard of reasonableness	11.84
External standard	11.94
Performance and reliance	11.100
Terms of the contract	11.104
Terms to be implied in fact, law, or custom	11.118
Severance	11.124
<b>12. Consideration</b>	
A. Introduction	12.01
B. History	12.03
Early history	12.03
The eighteenth century	12.12
C. Function and Definition	12.17
D. Adequacy of Consideration	12.19
E. Nominal Consideration	12.22
F. Consideration Must Be Sufficient	12.30
G. Consideration Must Be Referable to the Promise	12.36

H. Consideration Must Move From the Promisee (But Not Necessarily to the Promisor)	12.48
I. Past Consideration is Not Consideration	12.53
J. Consideration Must Not Be Illusory	12.55
K. Performing Existing Legal Duties	12.62
Duties imposed by law	12.62
Contractual duties	12.68
Promise to perform contractual duty to third party	12.75
L. Part Payment of a Debt is Not Consideration for a Promise to Discharge Debt	12.79
M. Exceptions to the Consideration Rules	12.83
N. Estoppel	12.91
The meaning of estoppel	12.91
Types of estoppel	12.92
Promissory estoppel	12.95
<b>13. Is There a Duty to Negotiate in Good Faith?</b>	
A. Introduction	13.01
The issue	13.01
The genesis of the duty of good faith	13.10
Content of the duty	13.15
B. The Role of Good Faith	13.18
Introduction	13.18
The preservative function	13.21
Pre-contractual liability	13.36
C. Conclusion	13.92
<b>14. Pre-Contractual Liability</b>	
A. Liability in Contract	14.02
B. <i>Quantum Meruit</i>	14.05
C. Estoppel	14.12
<i>Index</i>	439