

TABLE OF CONTENTS

<i>Foreword</i>	[v]
<i>Preface</i>	[vii]
<i>Table of Cases</i>	[xv]
<i>Table of Statutes</i>	[xciii]
<i>Table of Statutory Instruments</i>	[xcvii]

PART I RESCISSION

1 THE NATURE OF RESCISSION	
I. GENERAL PRINCIPLES	1-001
II. THE PROCESS OF RESCISSION	1-009
2 THE GROUNDS OF RESCISSION	
I. MISREPRESENTATION	2-002
II. NON-DISCLOSURE	2-017
III. MISTAKE	2-022
IV. DURESS	2-025
V. UNDUE PRESSURE	2-030
VI. UNDUE INFLUENCE	2-031
VII. IMPAIRED CAPACITY	2-036
VIII. UNCONSCIONABLE CONDUCT	2-040
IX. BREACH OF FIDUCIARY DUTY	2-044
3 BARS TO RESCISSION	
I. COMPLETE RESTORATION NOT POSSIBLE	3-002
II. AFFIRMATION	3-023
III. LAPSE OF TIME	3-033
IV. THIRD PARTY RIGHTS	3-040
V. DAMAGES IN LIEU OF RESCISSION	3-044
4 THE CONSEQUENCES OF RESCISSION	
I. EXTINCTION OF THE CONTRACT	4-004
II. RESTITUTION TO PREVENT UNJUST ENRICHMENT	4-012
III. PROPRIETARY CONSEQUENCES	4-023
IV. INDEMNITY	4-031
V. COMPENSATION	4-033
VI. APPORTIONMENT OF LOSS	4-036
VII. CONCURRENT CLAIMS	4-037

PART II BREACH AND PERFORMANCE

5 BREACH: INTRODUCTION	
I. FUNDAMENTAL ASPECTS	5-001
II. "RENUNCIATION" AND "REPUDIATION" BY ACTUAL BREACH: QUESTIONS OF TERMINOLOGY	5-016

CONTENTS

III.	UNFULFILLED DEPENDENT OBLIGATIONS: THE RIGHT TO WITHHOLD PERFORMANCE	5-018
IV.	STRICT OR NON-STRICT OBLIGATIONS	5-019
V.	DELIBERATE BREACH	5-029
VI.	NOMINAL OR SUBSTANTIAL DAMAGES	5-037
VII.	BREACHES WHICH JUSTIFY TERMINATION	5-038
VIII.	"TERMINATION OR DISCHARGE FOR BREACH" AND "RESCISSION" (AB INITIO) FOR VITIATION	5-040
6	RENUNCIATION BY WORDS OR CONDUCT	
I.	RENUNCIATION: THE GENERAL CONCEPT	6-001
II.	PARTY'S DECLARATION THAT WILL NOT PERFORM	6-013
III.	IMPLIED RENUNCIATION BY CONDUCT OR INACTION	6-018
IV.	PROPOSED PERFORMANCE SUBSTANTIALLY INCONSISTENT WITH AGREED TERMS	6-060
V.	UNJUSTIFIED RENUNCIATION OCCURRING IN GOOD FAITH	6-081
7	ANTICIPATORY BREACH	
I.	THE TWO CATEGORIES OF ANTICIPATORY BREACH	7-001
II.	ANTICIPATORY BREACH BY RENUNCIATION	7-008
III.	ANTICIPATORY BREACH BY SELF-DISABLEMENT	7-031
IV.	ANTICIPATORY BREACH APPLICABLE EVEN IF THE INNOCENT PARTY HAS ALREADY PERFORMED FULLY	7-062
V.	NO RIGHT TO INSIST ON THE OTHER PARTY'S REASSURANCE THAT PERFORMANCE WILL OCCUR	7-066
VI.	INJUNCTION TO RESTRAIN ANTICIPATORY BREACH	7-070
VII.	DAMAGES FOR ANTICIPATORY BREACH	7-071
VIII.	CAN THERE BE AN ACTIONABLE ANTICIPATORY BREACH WITHOUT TERMINATION OF THE CONTRACT?	7-078
IX.	ELECTION NOT TO ACCEPT AN ANTICIPATORY BREACH: WHITE & CARTER (1962)	7-084
X.	LIU'S UNITARY THEORY OF ANTICIPATORY BREACH	7-118
8	REPUDIATION BY ACTUAL BREACH	
I.	THE GENERAL CONCEPT OF REPUDIATION	8-001
II.	REPUDIATION BY REPETITIVE BREACH	8-036
III.	REPUDIATION IN THE CONTEXT OF INSTALMENT CONTRACTS	8-041
IV.	NO REPUDIATION WHERE GOOD REASON EXISTS FOR TERMINATION BUT THE WRONG REASON (OR NO REASON) WAS OFFERED (THE BOSTON DEEP SEA PRINCIPLE)	8-068
V.	REPUDIATION BY UNJUSTIFIED CONTRACTUAL DEFAULT EVEN IF THIS OCCURS IN GOOD FAITH	8-090
9	TERMINATION CLAUSES	
I.	SUMMARY	9-001
II.	EXPRESS RIGHT TO CANCEL WITHOUT BREACH	9-012
III.	EXPRESS RIGHT TO TERMINATE FOR BREACH	9-016
IV.	CLAUSES PERMITTING TERMINATION FOR "MATERIAL BREACH"	9-038
V.	IMPLIED CANCELLATION RIGHTS	9-066

CONTENTS

10	COMMON LAW RIGHT TO TERMINATE FOR BREACH OF CONDITION	
	I. OVERVIEW OF TERMINATION FOR BREACH OF PROMISSORY TERMS	10-001
	II. WHEN IS A TERM A (PROMISSORY) "CONDITION"?	10-036
	III. STATUTORY CONTROL OF OVER-TECHNICAL REJECTION OF GOODS BY COMMERCIAL BUYERS	10-091
	IV. TIME STIPULATIONS IN GENERAL	10-102
	V. RELIEF AGAINST FORFEITURE OF PROPRIETARY OR POSSESSORY INTERESTS	10-103
	VI. THE MITIGATION DOCTRINE'S INDIRECT RESTRICTION ON TERMINATION FOR RENUNCIATION OR REPUDIATION	10-109
11	TIME STIPULATIONS	
	I. "TIME OF THE ESSENCE": A SUMMARY	11-001
	II. DETAILED EXAMINATION OF TIME STIPULATIONS	11-011
	III. NOTIFICATION OF LATENESS: THE FINAL ANALYSIS	11-048
12	INNOMINATE OR INTERMEDIATE TERMS: "WAIT AND SEE" BECAUSE "IT ALL DEPENDS"	
	I. RECOGNITION OF THE INTERMEDIATE TERM IN THE HONGKONG FIR CASE (1962)	12-001
	II. CRITERIA FOR IDENTIFYING INTERMEDIATE TERMS	12-004
	III. DOES THIS BREACH OF THE INTERMEDIATE TERM ENTITLE THE INNOCENT PARTY TO TERMINATE	12-008
	IV. SALE OF GOODS TRANSACTIONS AND INTERMEDIATE TERMS	12-021
	V. THE PROS AND CONS OF THE INTERMEDIATE TERM	12-025
	IV. WAS THE HONGKONG DECISION THE RE-INVENTION OF THE WHEEL?	12-027
	VII. RECEPTION OF THE INTERMEDIATE TERM IN AUSTRALIA AND NEW ZEALAND	12-030
13	THE NATURE OF TERMINATION FOR BREACH	
	I. TERMINOLOGY	13-001
	II. ANALYTICAL PARALLEL WITH THE PROSPECTIVE FORM OF DISCHARGE FOR FRUSTRATION	13-008
	III. PRINCIPLES OF EUROPEAN CONTRACT LAW AND UNIDROIT'S PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS	13-009
	IV. CONSEQUENCES OF TERMINATION OR DISCHARGE FOR BREACH IN ENGLISH LAW	13-010
14	THE PROCESS OF TERMINATION FOR BREACH	
	I. INNOCENT PARTY'S CHOICE	14-001
	II. BINDING NATURE OF THE ELECTION	14-017
	III. "NO THIRD CHOICE"	14-028
	IV. INNOCENT PARTY'S PAUSE FOR THOUGHT	14-037
	V. GUILTY PARTY NOTIFIED OR BECOMING AWARE OF INNOCENT PARTY'S ELECTION DECISION	14-044
	VI. INNOCENT PARTY WAIVING RIGHT TO TERMINATE OR LOSING RIGHT BECAUSE OF ESTOPPEL	14-064
	VII. INNOCENT PARTY LOSING RIGHT TO TERMINATE BECAUSE OF ESTOPPEL ..	14-067

CONTENTS

VIII.	NEW OPPORTUNITY TO TERMINATE	14-074
15	THE ENTIRE OBLIGATION RULE	
	I. NATURE	15-001
	II. THE PATTERN OF THE CASES	15-013
	III. CASES WHERE THE PERFORMING PARTY WAS HELD TO BE ENTITLED TO THE AGREED SUM	15-017
	IV. SUBSTANTIAL PERFORMANCE: CASES WHERE THE PERFORMING PARTY WAS HELD NOT TO BE ENTITLED TO THE AGREED SUM	15-029
	V. ASSESSMENT	15-044
PART III FRUSTRATION: DISCHARGE BY IMPOSSIBILITY, ILLEGALITY OR FRUSTRATION		
16	THEORY	
	I. NATURE AND LEGAL BASIS	16-001
	II. RISK ALLOCATION	16-012
	III. "SELF-INDUCEMENT" PRECLUDES FRUSTATION	16-022
	IV. FORCE MAJEURE CLAUSES	16-044
	V. ECONOMIC CONSIDERATIONS	16-066
17	CASES OF CONTRACT FRUSTRATION	
	I. INTRODUCTION	17-001
	II. LEGAL IMPOSSIBILITY: SUPERVENING ILLEGALITY	17-013
	III. PHYSICAL IMPOSSIBILITY	17-016
	IV. FRUSTRATING DELAY	17-059
	Delay and the commercial purpose	17-070
	V. FRUSTRATION OF THE VENTURE: PERFORMANCE NOT "POINTLESS"	17-072
	VI. LONG-TERM CONTRACTS	17-085
18	THE EFFECT OF FRUSTRATION	
	I. OVERVIEW	18-001
	II. MONEY PAID OR MONEY OWING PRIOR TO FRUSTRATION	18-008
	III. SERVICES PERFORMED OR GOODS DELIVERED PRIOR TO FRUSTRATION ...	18-019
PART IV REMEDIES		
19	CLAIMS IN DEBT	
	I. THE NATURE OF DEBT	19-001
	II. THE RIGHT TO SUE FOR A DEBT	19-006
	III. DEBT OR DAMAGES: BORDERLINE CASES	19-025
	IV. LIMITS TO THE ACTION OF DEBT	19-034
20	DAMAGES FOR BREACH OF CONTRACT—INTRODUCTION	
	I. DEFINITIONS	20-001
	II. THE AIMS OF DAMAGES FOR BREACH OF CONTRACT	20-019
	III. DAMAGES FOR BREACH: THE MEASURES OF AWARD	20-034
21	DAMAGES: FINANCIAL LOSS	
	I. IN GENERAL	21-001

II.	THE BASIC MEASURE OF RECOVERY: REPLICATING THE CLAIMANT'S NET POSITION AS IF CONTRACT PERFORMED	21-007
III.	WAYS OF EXPRESSING THE LOSS RESULTING FROM NON-PERFORMANCE: THE CONCEPTS OF EXPECTATION, RELIANCE AND CONSEQUENTIAL DAMAGE	21-038
IV.	WAYS OF EXPRESSING THE LOSS RESULTING FROM NON-PERFORMANCE: "COST OF CURE" OR BALANCE-SHEET CALCULATION?	21-064
V.	WAYS OF EXPRESSING THE LOSS RESULTING FROM NON-PERFORMANCE: CONTRACTS GIVING THE BREACHING PARTY A CHOICE AS TO HOW TO PERFORM	21-075
VI.	FINANCIAL LOSS: QUESTIONS OF TIMING	21-084
VII.	THE USE TO WHICH THE CLAIMANT PUTS DAMAGES	21-103
VIII.	THE DEFINITION OF "LOSS": SOME PROBLEMICAL CASES	21-106
22	DAMAGES: NON-PECUNIARY LOSS	
I.	THE GENERAL RULE: NO RECOVERY	22-002
II.	THE EXCEPTIONS TO THE GENERAL RULE	22-008
23	DAMAGES: REMOTENESS OF LOSS	
I.	RE MOTENESS: THE RULE IN HADLEY V BAXENDALE	23-001
II.	HADLEY V BAXENDALE—THE FIRST "LIMB" (CONTEMPLATION OF PERSONS GENERALLY)	23-017
III.	HADLEY V BAXENDALE—THE "SECOND LIMB": LOSS IN THE CONTEMPLATION OF THE PARTIES	23-031
IV.	HADLEY V BAXENDALE: THE RELATION BETWEEN THE TWO LIMBS	23-042
V.	HADLEY V BAXENDALE: THE MEANING OF LOSS IN THE PARTIES' CONTEMPLATION	23-047
VI.	A SPECIAL CASE: INTEREST AND LATE PAYMENT OF MONEY	23-053
VII.	DELIBERATE BREACHES AND LOSS DELIBERATELY CAUSED	23-054
24	DAMAGES: CAUSATION, MITIGATION AND THE CONDUCT OF THE CLAIMANT	
I.	CAUSATION	24-002
II.	THE CONDUCT OF THE CLAIMANT: AVOIDABLE LOSS AND THE DUTY TO MITIGATE	24-044
III.	THE FAULT OF THE CLAIMANT: CONTRIBUTORY NEGLIGENCE AND DAMAGES FOR BREACH OF CONTRACT	24-077
25	DAMAGES: AGREED DAMAGES AND OTHER REMEDIES FOR BREACH	
I.	LIQUIDATED DAMAGES CLAUSES	25-001
II.	THE DOCTRINE OF PENALTIES	25-004
III.	RELIEF AGAINST FORFEITURE	25-064
IV.	THE CONSUMER RIGHTS ACT 2015	25-071
V.	CREDIT AND HIRE PURCHASE: THE CONSUMER CREDIT ACT 1974	25-072
VI.	INSOLVENCY LAW AND THE "RULE AGAINST DEPRIVATION"	25-073
26	DAMAGES: GAIN-BASED AWARDS	
I.	THE GENERAL PRINCIPLE	26-001

CONTENTS

II.	QUALIFICATIONS TO THE GENERAL RULE	26-004
27	SPECIFIC RELIEF: THE GRANT OF SPECIFIC PERFORMANCE	
I.	THE NATURE OF SPECIFIC REMEDIES	27-001
II.	THE NATURE OF SPECIFIC PERFORMANCE	27-007
III.	SPECIFIC PERFORMANCE AND COMMON LAW REMEDIES	27-010
IV.	SPECIFIC PERFORMANCE AND THIRD PARTIES	27-014
V.	THE AVAILABILITY OF SPECIFIC PERFORMANCE	27-015
VI.	THE COURT'S DISCRETION	27-018
VII.	GENERAL EQUITABLE BARS TO SPECIFIC PERFORMANCE	27-077
VIII.	SPECIFIC PERFORMANCE AND THE INSOLVENT DEFENDANT	27-083
IX.	PARTICULAR APPLICATIONS OF SPECIFIC PERFORMANCE: SPECIFIC PERFORMANCE COUPLED WITH MONEY PAYMENTS	27-087
X.	A SPECIALISED CASE: SPECIFIC PERFORMANCE WHERE NO LIABILITY AT LAW	27-096
28	SPECIFIC RELIEF: INJUNCTIONS AND BREACH OF CONTRACT	
I.	GENERALLY	28-001
II.	PROHIBITORY INJUNCTIONS	28-004
III.	MANDATORY INJUNCTIONS TO ENFORCE CONTRACTUAL OBLIGATIONS	28-021
IV.	MANDATORY RESTORATIVE INJUNCTIONS	28-024
V.	INJUNCTIONS AND INDIRECT SPECIFIC PERFORMANCE	28-027
VI.	INJUNCTIONS AND THE INSOLVENT DEFENDANT	28-036
<i>Index</i>	page 695