

Index

- Abandonment of contract:
arbitration 30-1, 493
release 491
rescission 493
- Acceptance:
actual notification, offeror requiring 46
battle of forms, 39-40
change of terms, effect of 39
communication:
 general offer, in case of 43
 going astray, risk of 44-5
 instantaneous modes of 47
 need for 41
 offeree, other than by 42
 offeror, to 41
 place of contracting 45
 waiver 42-3
definition 38
electronic means, by 43-7
equivocal 41
inconclusive 38
inferred 49
mental, insufficiency of 41
mistake as to 306-8
need for 27
notification of 36
offer:
 acceptor to have knowledge of 49-50
 coinciding with 38
 party to which offer addressed, by 311-13
 performance, by 43
 place of 47
 post, by 43-7
 prescribed mode of 50-1
 previous dealings, based on 48
 process of 28-9
 qualified 41
 revocation 51
 silence, by 47-9
 telegram, by 43-7
 telemesssage, by 43-7
 unauthorized modes of 50-1
 unsolicited goods, of 48
- Accord and satisfaction:
discharge by 491-2
executory satisfaction 491-2
promissory estoppel 492
- Account:
agent, duty of 635
- Action for agreed sum:
advance payment of price 594
remedy of 593-5
repudiatory action before falling due 594-5
- Advertisement:
auction, of 56
offer, not 33
reward, of 35-6
- Affirmation:
breach of contract, effect on 141-2, 537
rescission, limitation on right of 249, 285
- Age:
majority, of 211
- Agency:
agent *see* Agent
agent and third parties, relationship between 648-53
creation, means of 623
effects of 635
exemption clauses benefiting third parties 442
expenses, reimbursement of 632
fiduciary nature of 636
gaming contract, relating to 345
nature of 623
necessity, of:
 meaning 630-1
 negotiorum gestio, no recognition of 631-2
 ship-masters and carriers, of 631
principal *see* Principal
relations between principal and agent 635-41
relations between principal and third parties 641-8
- Agent:
auctioneer as 632-3
authority:
 actual 624
 cohabitation, in case of 630
 employee, of 629
 husband and wife, of 629
 implied 624
 interest, coupled with 657-8
 irrevocable 657-60
 limited 628-9
 ostensible 627-30
 partnership, of 629
 revoked 628-9
 termination of 654-60
brokers 634
capacity 623
Commercial 634, 659-60
commission, earning 640
Crown 207
del credere 639
duties of:
 account, to 635
 bribe, not to take 636-7
 care and skill, exercise of 635
 conflict of interests, avoiding 637-8
 delegate, not to 638
 fiduciary 636
 secret profit, not to make 636

- Agent (cont.):**
 estate agent 634
 expenses, reimbursement of 641
 factor as 633
 fraud of principal, acting in 641
 lien, entitlement to 641
 misrepresentation through 644-7, 650-1
 named principal, contracting for 648
 non-disclosure through 644-7
 non-existent principal, contracting for 650
 party to deed, as 642, 649
 personal liability 648-51
 personality, importance of 643
 power of attorney 658
 principal:
 acting as 651
 not contracting as 643
 privity of contract 638, 648
 ratification of contract by:
 capacity of principal to contract 626
 existence of principal 626
 manner of 627
 means of 624-5
 principal to be named or identifiable 625
 time of 627
 relations with principal 635-41
 relations with third parties 648-53
 remuneration, right to 639
 settlement with 647-8
 signing on behalf of principal 644
 solicitor as 634
 termination of authority:
 act of parties, by 654
 commercial agents 659-60
 death, by 655-6
 frustration, by 655
 insolvency, on 655
 means of 654
 mental incapacity, on 656-7
 operation of law, by 655-7
 personal liability or loss, incurring 659
 third party, settlement by 648
 unauthorized acts of 652
 undisclosed principal, acting for 652
- Agreement:**
 certainty of terms 62-7 *see also* Terms
 common intention, expression of 27
 conclusion of 27
 conditions, subject to 70
 conduct, inferences from 29-32
 contract as 2
 exchange of correspondence, made by 28
 imposition by court 63
 incomplete:
 further agreement, reference to 67-8
 further terms unresolved, where 67
 letters of intent, status of 68
 informal, acting on 68
 intention, objective test of 31
 offer and acceptance 27-9 *see also* Acceptance;
 Offer
 provisional, meaning 69
 subject to contract 68-9
 technique of 32
 uncertain 61-7
- Ambiguity:**
 construction of contract in 157
 mistake, giving rise to 295, 327
- Anticipated contract:**
 services rendered 30, 46, 64-5
- Anticipatory breach 541-3**
- Anti-competitive practices:**
 abuse of dominant position 373
 Article 85 372-3, 376-7
 Article 86 373
 European Community law 372-3
 legislation controlling 371
- Apprenticeship:**
 contract of 214-15
- Arbitration:**
 abandonment of contract 30-1, 493
 frustration, cases relating to 534
- Assignment:**
 chose in action, of 447-8
 contractual liabilities, of:
 consent, requirement of 461
 general rule 461
 mutual rights and obligations 462
 novation, by 462
 vicarious performance 461
 contractual rights, of:
 claims arising 457
 commercial or financial interest 459
 common law, at 447-8
 equitable 452-6
 equities, assignee taking subject to 456
 equity, in 448-9
 general rule 447
 insurance policies, of 452
 Law of Property Act, under 449-52
 priorities 458
 rights not capable of 458-60
 statutory 449-52
 stocks and shares 452
 title of assignee 456-8
 copyright, of 447, 452
 Crown, to and by 447
 equitable:
 agreement for 455
 consideration 454-6
 equitable chose, of 455
 form 453
 gratuitous 455
 informal nature of 453
 joinder of assignee 453
 legal chose, of 456
 notice of 454
 title acquired 452
 Law of Property Act, under:
 absolute, to be 450
 charge, by way of 451
 consideration, no need for 452
 effect of 450
 express notice, need for 451

- requirements 449
- rights subject to 452
- writing, need for 451
- negotiability distinguished:
 - consideration 466
 - holder in due course 467
 - notice 466
 - title 466
- negotiable instruments *see* Negotiable instruments
- novation distinguished 462
- operation of law, by:
 - bankruptcy, on 470
 - covenants on land, of 471
 - death, on 469
 - patents, of 447, 452
- rights not capable of:
 - bare right of action 459
 - employment contracts 460
 - personal contracts 460
 - prohibitions 458
 - public officers, salaries of 460
- Assumpsit*:
 - misfeasance, claim for 12
 - money, for 14
 - nonfeasance, claim for 13
 - reliance damage, action for 15
 - rise of 16
- Auction:
 - advertisement of, effect 56
 - bid at as retractable offer 56
 - offers and invitations to treat 34
 - sales without reserve, revocability of offer 55-7
- Auctioneer:
 - agent, as 632-3
- Bailment:
 - assumption of risk 444-5
 - exemption clauses, construction of 177-8
 - hire, for 438
 - imposition of contractual liabilities on third parties 434
 - nature of 434
- Bankruptcy:
 - assignment of property on 470
 - discharge of contract on 555
 - proceedings 470
- Battle of the forms 39-40
- Bilateral contracts 29
- Bill of exchange:
 - acceptance 464
 - discharge of 492
 - drawing of 464
 - holder in due course 467
 - illegal agreement, relating to 397
 - indorsement 464
 - limitation of negotiability 467-8
 - negotiable instrument, as 464
 - past consideration 95
 - principal not liable on 642
 - use of 467
 - writing, requirement of 78
- Bill of lading:
 - aspects of 468
 - copies of 468
 - holder, rights of 469
 - negotiable instrument, differing from 469
- Bill of sale:
 - form 78
- Blackmail:
 - duress and 276-7
- Breach of confidence:
 - remedies for 261
- Breach of contract:
 - accrued obligation, remaining 550-1
 - affirmation, implied 537
 - anticipatory 541-3
 - basis for determining existence of 62
 - consequences of discharge 530-1
 - damages, obligation to pay 535 *see also* Damages
 - discharge at option of injured party 535-9
 - discharge by:
 - forms of 539
 - frustration distinguished 518, 526, 550
 - election to accept repudiation, effect of 538
 - failure of performance 537
 - common ground, as 545
 - condition, broken term being 547
 - discharge from liabilities, entitlement to 545
 - entire obligation, of 547
 - independence of promises 546
 - instalment contracts 549-50
 - root of contract, going to 548-50
- fundamental:
 - construction 171-3
 - current position 173
 - exemption from liability for, impossibility of 171
 - nature of terms 170-1
 - principle of 170
 - repudiation of contract 172
 - rule of law 171
 - substantive doctrine 172
- impossibility created by one party:
 - before performance due 544
 - during performance 545
 - effect of 534
 - renunciation, differing from 534-5
- innocent party not accepting 535-6
- instalment contracts 549-50
- loss of right of discharge 551
- no reason or bad reason given for 538-9
- prevention of performance by promisee 545
- quantum meruit*, claim for 551
- remedies for:
 - agreed sum, action for 593-5
 - damages *see* Damages
 - direct enforcement 593
 - heads of 559
 - injunction *see* Injunctions
 - restitutionary 539, 604-15 *see also* Restitution
 - specific performance *see* Specific performance
 - renunciation of liabilities:
 - before performance due 541-3

- Breach of contract (*cont.*):
 renunciation of liabilities (*cont.*):
 during performance 543
 impossibility differing from 534-5
 intention, requirement of 540
 occurrence of 539
 root of contract, going to 548-50
 unaccepted repudiation, limited effect of 536-7
- Breach of promise:
 marriage, of 357
- Broker:
 agent, as 634
- Building contracts:
 frustration 511
 generally 2-3
 imposition of contractual liabilities on third parties 430
- Business efficacy:
 implied terms for 144-6
- Business liability:
 Unfair Contract Terms Act, for purposes of 185
- Capacity to contract *see also* Incapacity:
 corporations of *see* Corporations
 Crown, of *see* Crown
 drunken person, of 229-31
 limitations on 203
 mentally disordered persons, of 229-31
 minors, of *see* Minors
 partnerships, of 229
 public authorities *see* Public authorities
 trade union, of 229
 unincorporated associations, of 228-9
- Carriage of goods:
 damages for loss 574
 deck, carriage of cargo on 176
 delay in 176
 deviation cases 175-6
 exemption clauses, construction of 175-7
 frustration of contracts 511
 effects of 533
 misdelivery 177
- Carriers *see also* Carriage of goods:
 agency of necessity 631
- Cartel:
 public interest, consideration of 371
 purpose of 371
 restraint of trade, as 370-4
- Catalogue:
 offer, whether 33
- Causation 567
- Certainty:
 agreements to negotiated 65
 executed transactions 64
 lock-out agreement 66-7
 machinery for ascertainment 65
 necessity for in contract 62-8, 98
- Champertry:
 bare right of action, no assignment of 459
 crime and tort, abolition of 356
 illegal contract of 355
- Charge:
 assignment by way of 451
- Charge card:
 payment by 480
- Charterparty:
 condition in 133
 frustration 509-10
 imposition of contractual liabilities on third parties 435-7
 use of chartered ships, restrictions on 435-7
- Chattels:
 contracts concerning, imposition of contractual liabilities on third parties 431-8
 use, restrictions on 437-8
- Child *see* Minor
- Cheques:
 indorsement in blank 463
 limitation of negotiability 468
 negotiable instrument, as 463
 special indorsement 463
- Chose in action:
 assignment 447-8
 equitable 448, 453, 455
 legal 448, 453, 456
- Civil servants:
 contract of employment, lack of 72
- Codification:
 intention of 17-18
- Cohabitation:
 agency, authority for 630
- Collateral agreement:
 illegal contracts 397
 land, for sale or disposition of 82-3
- Commodity futures:
 gaming, as 339
- Common law:
 contract as part of 1
- Company:
 contractual capacity:
 lack of, abuse of power distinguished 226
 ultra vires doctrine, modification of 226-8
 directors, powers of 228
 form of contracts by 228
- Competition *see* Illegality; Restraint of trade
- Compromise:
 consideration, as 100
- Conditions:
 breach:
 acceptance of 142-3
 affirmation after 141-2
 breach of warranty, treatment as 142
 remedy for 132
 right of discharge, loss of 141-3
 waiver 141-2
 charterparty, clause in 133
 contingent 133-5
 definition 133
 essential term, as 133
 express provision as 140
 fulfilment and consideration distinguished 90
 fundamental 141
 implied provision as 140-1

- intermediate terms distinguished 139-41
- judicial decision, categorized by 140
- non-fulfilment of 135
- operation of contract, vital to 133
- promise, as 133
- promissory 133-5
- standard, use of 159-60
- statement of fact as 133
- statute, designation by 139
- stipulation, as 132
- subsequent 135
- terms classified as 132
- warranty, distinguished from 132, 136
- Conduct:
 - certain and uniform course of, custom as 149
 - inferences from 29-32
 - standard in fiduciary relationship 261
 - subsequent, of parties 157
- Consensus:
 - theory of contract 4, 45, 50, 162, 294, 306
- Consideration:
 - absence, effect of 123
 - accidental binding of parties, prevention of 89
 - adequate, no need to be 96-7
 - appraisal of doctrine 123-4
 - benefit or detriment, as 89
 - compromise as 100
 - covenant in restraint of trade, for 365
 - definition 88-90
 - derisory, court finding 123
 - discharge by agreement, doctrine applying to 490
 - equitable assignment, for 454-6
 - evidence of intention to be bound, as 91
 - executed 92
 - executory 92
 - existing duty, discharge of:
 - creditors, composition with 109
 - difference, existence of 107
 - Foakes v. Beer*, rule in 108-9
 - no consideration, as 107
 - smaller sum, acceptance of 108
 - third party, part payment by 110
 - existing duty, performance of:
 - detriment and benefit, showing 101
 - performing party, detrimental to 105
 - practical benefits 105-7
 - promise to perform 103-4
 - promisor, owed to 104-7
 - public duty 101-2
 - third party, owed to 102-4
 - failure of:
 - money paid, recovery of 605-7
 - partial 606-7
 - subject-matter on contract, non-existence of 300
 - total 605-6
 - fair price, no doctrine of 97
 - forbearance as 90, 99-100
 - fulfilment of condition distinguished 90
 - functions of 124
 - gift distinguished 90
 - impossibility 98
 - justification of doctrine 123
 - lack, defence of 92
 - legally enforceable promises, test of 89
 - love and affection as 98
 - moral obligation, and 91
 - motive distinguished 98
 - necessity for in simple contract 90-1
 - negotiable instruments, for 95-6, 466
 - nominal 97
 - past:
 - antecedent debt, for 94
 - exceptions to rule 93-5
 - inadequacy of 93
 - meaning 93
 - negotiable instruments, for 95
 - request of promisor, at 93-4
 - peppercorn 97
 - privity of contract, rule distinguished 95
 - promise, in return for 89
 - promise to do something already required 88
 - promisee, moving from 95-6
 - promissory estoppel as alternative to 110
 - real, to be 97-100
 - reciprocity 88
 - requirement, circumventing 74
 - reward, in case of advertisement for 92
 - surrender of document as 96-7
 - uncertainty 99
 - value, having 96
 - variation, for 495-6
 - variety of policies, reflecting 124
 - waiver not requiring 497-8
- Construction of contract:
 - document, intention ascertained from 156-7
 - ejusdem generis* rule 158
 - exemption clauses *see* Exemption clauses
 - express mention, similar matters excluded by 158
 - parol evidence rule 130-1
 - party putting forward document, against 159
 - plain and literal meaning, words given 157
 - prior negotiations, evidence of 157
 - specific and particular descriptions of subject-matter:
 - meanings narrowed by 158
 - subsequent conduct of parties 157
 - subsidiary rules 158
 - two meanings, words with 158
 - whole of instrument, from 158
- Consumer credit agreement:
 - duty of disclosure 268
 - oppressive dealing 290
 - writing, requirement of 78
- Consumer Protection Advisory Committee:
 - consumer trade practices, powers as to 199
- Consumer transactions:
 - unfair terms *see* Unfair Contract Terms Act
- Contract:
 - actionable promise or promises, as 2, 27
 - adhesion, of 159-60
 - agreement *see* Agreement
 - breach *see* Breach of contract

- Contract (cont.):**
 conditions, subject to 70
 consideration *see* Consideration
 constitutive function 3
 construction *see* Construction of contract
 deed, made by *see* Deed
 definition 2
 discharge *see* Discharge
 early actions 10-12
 economic risks, allocation of 3
 English law, principles of 1
 European Community influence 18
 everyday types of 2
 form, need for 74
 formal requirements, role of 75
 freedom of *see* Freedom of contract
 illegal *see* Illegal contract
 interests protected by 8-9
 law of obligations, as part of 21-2
 nature and function of 1-9
 offer and acceptance 27-9 *see also* Acceptance;
 Offer
 performance *see* Performance of contract
 place of 45
 privity *see* Privity of contract
 remedies:
 damages *see* Damages
 form of 8
 injunction *see* Injunctions
 provision for 3
 restitution *see* Restitution
 specific performance *see* Specific performance
 responsibilities of parties, establishing 3
 sanctity of 7, 16
 separate and conflicting interests, reconciling 3
 simple 74
 standard form 5, 36, 159-60
 terms *see* Terms
 tort, concurrence of claims in 21-2
 types of 74
uberrimae fidei:
 disclosure, duty of *see* Disclosure; Non-
 disclosure
 meaning 258
 unenforceable 20
 unilateral and bilateral 29
 vitiating factors, effect of 19
 void *see* Void contract
 voidable *see* Voidable contract
 writing, requirement of:
 evidence, as 78-9
 examples of 78
 guarantee, contracts of 79-81
 sale or disposition of land, contract for 81-8
- Contract law:**
 codification, intention of 17-18
 content of 19-20
 description of 1
 European law, common principles of 18
 general principles 19
 Indian, codification of 17
 international 18
 statutory 17
 twentieth century, reshaping in 17
- Contractual capacity *see also* Incapacity:**
 corporations of *see* Corporations
 Crown, of *see* Crown
 drunken person, of 229-31
 limitations on 203
 mentally disordered persons, of 229-31
 minors, of *see* Minors
 partnerships, of 229
 public authorities *see* Public authorities
 trade union, of 229
 unincorporated associations, of 228-9
- Contractual obligations:**
 early actions 10-12
 history of 9-18
 obligations in tort, and 21
 principles, development of 15-16
- Contributory negligence 583-4**
- Copyright:**
 assignment of rights 447, 452
 imposition of contractual liabilities on third
 parties 433
- Corporations:**
 contractual capacity:
 lack of, abuse of power distinguished 226
 ultra vires doctrine, modification of 226-8
 directors, powers of 228
 form of contracts by 228
- Correspondence:**
 agreement made by 28
- Covenant:**
 early actions 10-11
 title, for 156
- Credit card:**
 payment by 480
- Creditors:**
 composition with as consideration 109
- Crime:**
 agreement to commit, illegality 349-50
 compromise of offences 353
- Crown:**
 agents 207
 assignment to or by 447
 commercial contract, binding itself by 205*-6
 contracts by 204
 discretionary powers:
 freedom to exercise 206
 preservation of 205
 employees:
 breach of contract by 207
 dismissal 206-7
 liability of 207
 office, holding during pleasure of the Crown
 206
 rights of 207
 future executive action, not fettering 205
 guarantee by 205
 immunity from legal proceedings 204
 Parliamentary funds, contract providing for
 payment from 204
 Petition of Right, action by 204

- Custom:
 binding effect, having 149
 certain and uniform course of conduct, as 149
 negotiability by 465
 notoriety 149
 reasonableness 149-50
 terms implied by 148-50
- Damages:
 agreed damages clauses:
 amounts recoverable 591-2
 breach, necessity for 590-1
 construction of 588-90
 liquidated damages 587
 penalties 587
 pre-estimate of damage, as 590
 assessment:
 basis of 564
 contract terms, reference to 565
 cost of cure, for 565-6
 diminution of value, for 565
 expectation measure 564-6
 performance measure 564-6
 reliance measure 566-7
 sale of goods, contracts for 577-82 *see also*
 Sale of goods
 bad bargain, no escape from 567
 basic object of 8
 causation 567-8
 compensatory nature of 560-3
 contributory negligence, and 583-4
 difficulty of assessment no bar to 560
 fraudulent misrepresentation, for 241-2
 inconvenience or disappointment, compensation
 for 561-2
 indemnity distinguished 248
 interest on 586
 liquidated 587
 loss of reputation, for 562-3
 market fluctuations, effect of 573-4
 mitigation 582-3
 negligent misrepresentation, for 243-5
 normal business position, flowing from 573
 overlap of rules 559
 penalties:
 amounts recoverable 591-2
 construction of 588-90
 resumption as to 589
 rule against 587
 plaintiff, contributory fault of 583-4
 punitive, not 560-1
quantum meruit, comparison with 612-13
 remoteness:
 basic rule of 568-71
 contemplation of breach 575
 damage in contemplation of parties 576
 economic loss, of 571-2
 effect of 568
 exceptional loss 574-5
 foundation of law 568
 loss of profits 569
 physical damage, of 571-2
 reasonable foreseeability 570
 tort, rule in, 22, 570-2
 type of damage 572
 usual course of things, damage arising in 572-5
 rescission, in lieu of:
 discretion to award 252-3
 measure of 253-4
 restitution:
 damages, as alternative to 604-14
 measure of damages, as 614-15
 tax element in 585
 tort, in 22, 241, 244-5, 570-2
- Death:
 agent, of 655-6
 assignment, effect on 469
 offeree, of 61
 offeror, of 61
 personal services, effect on contract for 508
 principal, of 655-6
- Debt:
 action in 10-11
assumpsit 13-15
 bonds, use of 11
 Common Pleas, jurisdiction of 14
 contract, on 12
 obligation, on 11
praescripte, writ of 11
 repayment, enforcement of 559
- Deceit:
 damages for 232
 measure of 241
 fraudulent misrepresentation *see*
 Misrepresentation
 requirements for action of 239
- Deed:
 agent as party to 642, 649
 attestation 76
 contract by 29
 execution of 76-7
 gratuitous promise, in case of 77
 need for, circumstances of 77
 validity 74
 delivery 77
 escrow, in 77
 irrevocability of offer made by 55
 nature of 76
 sealing, no need for 76
 statutory provisions governing 76
- Delay:
 carriage of goods, in 176
 delivery, in accepting 580
 frustration by 520-1
- Delivery:
 deed, of 77
 delay in accepting 580
 late 578
 misdelivery 177
 non-delivery 577
- Demurrage:
 nature of, in charterparty 172
- Description:
 sale of goods by 151-2

- Detinue:
 action in 10-11
 Director General of Fair Trading:
 action, taking 199
 consumer trade practices, powers as to 199
 Directors:
 powers of 228
 Disability *see* Capacity
 Discharge:
 agreement, by:
 accord and satisfaction 491-2
 automatic termination 500-1
 consideration 490
 contract, provisions in 500-2
 form of 490, 494
 release 491
 rescission *see* Rescission
 termination on notice 501-2
 writing, contracts evidenced by 490
 bankruptcy, on 555
 breach, by *see* Breach of contract
 frustration, by *see* Frustration
 judgment of court, by 553
 merger, by 552
 operation of law, by
 judgment of court 553
 merger 552
 written instrument, alteration or cancellation of 554
 Disclosure:
 agent, non-disclosure through 644-7
 duty of:
 allotment of shares, contracts for 263-4
 contracts *uberrimae fidei* 258
 family settlements, contracts preliminary to 263
 fiduciary relationships, relating to 261-3
 insurance contracts 259-61
 investment business, relating to 264, 268
 legislation, imposition by 268-9
 no general duty of 257-8
 non-disclosure *see* Non-disclosure
 Divorce:
 agreements for collusive, illegal 357
 marriage, promise of, on 358
 Documentary credit:
 payment by 479-80
 Documents:
 agreement, absence of 318-22
 blank, signed in 321
 intention ascertained from 156-7
 party putting forward, construction against 159
 printed terms in 165
 single, terms for sale or disposition of land in 82, 84-5
 several, guarantee consisting of 84
 standard form, terms in 125
 surrender as consideration 96-7
 Drunken person:
 contractual capacity 229-31
 Duress:
 alternative remedies and 274
 blackmail 276-7
 causation 273
 consent, vitiating 273-4
 contract, threat to break 272-3
 economic 17, 272-3
 entry into illegal contract induced by 392
 goods, of 272
 illegitimate pressure, occurrence of 271, 276-7
 juridical basis of 273-4
 lawful action, threats of 276-7
 lawful imprisonment, threat of 272
 legitimate renegotiation distinguished 274-6
 occurrence of 270
 person, of 271-2
 remedies for 274
 types of 271
 unlawful pressure:
 economic duress 272-3
 goods, duress of 272
 occurrence of 271
 person, duress of 271-2
 Easement:
 implied 147
 Economic loss:
 negligent misrepresentation causing 17
 Election:
 repudiation, to accept 538
 waiver as 499-500
 Employment:
 fiduciary relationship, as 262
 Employment contract:
 assignment, not capable of 460
 collective agreement, settled by 5
 Crown, with 206-7
 minor, by 214-15, 219
 Entire obligations 484-9
 Equity:
 equitable doctrine, operation of 74
 Escrow:
 meaning 77
 Estate agent:
 authority of 634
 Estoppel:
 apparent authority, doctrine of 627-8
 convention, by 119-20
 equitable, rules of 17
 existing or past fact, representations of 112
 forms of 110
 party to negotiations, raised by 121
 promissory *see* Promissory estoppel
 proprietary *see* Proprietary estoppel
 sale of land, in case of 86-7
 unconsciousness, general principle preventing 120-2
 waiver as 498-9
 Evidence:
 contract terms, of 130-1
 Executed contracts:
 misrepresentation relating to 254
 rescission, limitation on 254

- Exemption clauses:
 adhesion, contracts of 159-60
 agency contracts 442
 burden of proof 179
 business transaction, in 165-6
 construction:
 bailment, contracts of 177-8
 bargaining power, inequality of 165
 carriage of goods cases 175-7
 contra preferentum rule 167
 deliberate breaches, in case of 178
 hire-purchase cases 175
 illustrations of 174-9
 liability for negligence, exclusion of 167-9
 precise words, need for 166
 sale of goods cases 174
 statutory provisions 165
 strict 166
 exception to privity 445-6
 express undertakings, inconsistency with 180
 fundamental breach of contract, and:
 construction 171-3
 current position 173
 principle of 171
 protection of party by 173
 rule of law 171
 future contingencies, anticipation of 165
 implied contract 443-4
 legislative intervention 198-9
 liability for fraud, not excluding 181
 limitation clauses, and 169-70
 misrepresentation of 181
 misrepresentation, exclusion of 255-7
 previous course of dealing, incorporation by 161
 promise not to sue, contract construed as 441
 reasonableness 181-2
 third parties:
 benefit to 179-80, 439-40
 burden on 440-6
 Unfair Contract Terms Act, control by:
 breach of contract, exclusion or restriction of
 liability for 189
 business liability, application to 185
 consumer, dealing as 186
 contractual liability, application to 188-90
 force majeure clause, application to 190
 hire-purchase contracts 188
 impact of 195
 indemnity clauses, unreasonable 187
 liability for negligence, restrictions on power
 to exclude 186-7
 reasonableness test, 190-5
 sale of goods contracts 187-8
 scope of 182
 supply contracts 188
 varieties of clauses 184-5
 Unfair Terms in Consumer Contracts
 Regulations, control by:
 exclusions from 196
 fairness, test of 197-8, 293
 good faith, test of 198
 misrepresentation, cases of 257
 scope of 196
 vicarious immunity 441
- Fact:
 existing or past, representations of 112
 material, full disclosure of 262
 representation of 235-7
 statement of as condition 133
- Factor:
 agent, as 633
- Family arrangements:
 intention to create legal relations, lack of 71-3
- Family settlements:
 contracts preliminary to, duty of disclosure 263
- Fiduciary relationship:
 disclosure, duty of 261-3
 employment, in 262
 material facts, full disclosure of 262
 parties negotiating contract, between 263
 standard of conduct 261
 undue influence, giving rise to presumption of
 280 *see also* Undue influence
- Force majeure:
 clauses, use of 504
- Foreign law:
 misrepresentation of 237
- Fraud:
 agent, by 641
 agreement to perpetrate, illegality 349-50
 entry into illegal contract induced by 392
 equity, in 277-8
 meaning 261
 exemption clause, liability not excluded by 181
 fraudulent misrepresentation *see*
 Misrepresentation
 limitation of actions, effect on 617-18
 meaning 239
 remedies 277-8
- Frauds, Statute of *see* Statute of Frauds
- Freedom of contract:
 abuse of 181-2
 aspects of 4
 compulsory transactions 6
 equality of bargaining power, assumption of 4
 extent of 4
 implication of terms, effect of 6
 lack of 6-7
 nineteenth century, in 16
 objective theory, reconciliation with 6
 public authorities, of 210
 standard form contracts, use of 5
 statutory restrictions 4-5
 theory of 4
- Frustration:
 adventure, of 505-6
 agent's authority, termination of 655
 arbitration 534
 building contracts, of 511
 change in law, due to 512
 charterparties, of 509-10
 construction theory 517
 discharge for breach compared 518

Frustration (*cont.*):

- doctrine of:
 - defining characteristics 503
 - emergence of 504-6
 - history and scope of 503-13
 - effect of 7-8
 - accrued obligations, remaining 527
 - application of principles 532
 - benefits, value of 531
 - carriage of goods by sea, on 533
 - common law 526-8
 - contract of insurance, on 533
 - determination of contract 526
 - expenses, liability for 528-30
 - future obligations, discharge of 527
 - just sum, award of 532
 - money paid or payable, recovery of 529
 - non-monetary obligations 530-1
 - proviso 530
 - restitutionary response 528
 - sale of goods contracts, on 533
 - self-induced 527
 - service, performance of 531
 - statutory provisions 528-34
 - voyage charters, on 533
- foundation of contract, disappearance of 516
- implication of term, by 513-15
- impossibility, and 503
- instances of 506-13
- just and equitable result, as 515
- lease of land, application to 524-6
- non-occurrence of particular event as 507
- operation of law, by 515
- partial failure 534
- performance of one party, affecting 513, 520
- personal services, death or incapacity for 508
- radical change in obligation, as 516-18
- risk, incidence of:
 - contract, provision in 518-19
 - delay 520-1
 - foreseen events 519
 - inflation, effects of 521
 - performance of one party affected where 520
- sale and carriage of goods, contracts for 511
- sale of land, contract for 526
- self-induced:
 - different contracts, choosing between 522-3
 - effect of 527
 - inadvertent act, by 524
 - negligent act, by 524
 - reliance not placed on 521-2
 - subject-matter of contract, destruction of 506
 - theoretical basis 513-18
 - war, effect of 506, 513
- Fundamental breach *see* Breach of contract
- Fundamental terms:
 - breach *see* Breach of contract
 - meaning 171
- Gaming contract:
 - bookmaker and defaulting client, arrangements between 342
 - commodity futures, relationship with 339
 - common law, wagers at 340
 - definition 336
 - illegal gaming 348
 - insurance contract, relationship with 338
 - loans made for 346-8
 - null and void, being 341
 - principal and agent, relation of 345
 - restitution, and 342
 - securities 343-5
 - stakeholder, money deposited with 343
 - statutory provisions 340-3
 - Stock Exchange transactions 339
 - supplementary promises 341-2
 - uncertain event, as to 336-7
- Gift:
 - consideration distinguished 90
 - undue influence, presumed 282
- Good faith 7, 66, 113, 197-8, 232, 257-8, 275-6, 291-3, 565, 595, 636-7
- Government departments:
 - contracts with 204
- Guarantee, contract of:
 - continuing liability under 80
 - contract of indemnity distinguished 79
 - Crown, by 205
 - enforcement 83
 - larger transaction, as part of 80
 - non-disclosure 265
 - parties and subject-matter 84
 - primary responsibility of third party under 79
 - principal debtor 80
 - property, protecting 80-1
 - real liability under 79-80
 - several documents, consisting of 84
 - signature 84
 - Statute of Frauds, outside 80
 - writing, requirement of 79-81
- Hire:
 - imposition of contractual liabilities on third parties 438
- Hire-purchase:
 - conditions and warranties, statutory definition of terms as 139
 - exemption clauses, construction of 175
 - implied terms 156
 - imposition of contractual liabilities on third parties 438
 - Unfair Contract Terms Act, application of 188
- Husband and wife:
 - agency, creation of 629
 - intention to create legal relations 71-3
 - undue influence, presumed 280
- Illegal contract:
 - anti-competitive 359-80
 - benefit from 387-8
 - collateral transactions:
 - bills of exchange 397
 - security 397
 - untainted 397

- common law, at:
- action hostile to friendly foreign government, concerning 351
 - champerty 355
 - course of justice, agreements tending to pervert 353-4
 - crime or civil wrong, agreement to commit 349-50
 - criminal offences, compromise of 353
 - due discharge of parental duty, agreements affecting 357-8
 - fraud, to perpetrate 349-50
 - good government, agreements tending to injure 352
 - good morals, agreements contrary to 356-7
 - indemnity against loss incurred as result of criminal or tortious act, contract of 350
 - invalidation of contract 349
 - jurisdiction of courts, agreements ousting 358-9
 - legal process, agreements tending to abuse 354-6
 - maintenance 354
 - marriage, agreements affecting freedom or security of 357-8
 - public interest, contract injurious to 352
 - public policy 348-9
 - restraint of trade, in 359-81 *see also* Restraint of trade
 - revenue, agreement to defraud 350
 - salaries, assignment of 353
 - state, contracts injuring in relations with other states 351-2
- competition, restriction of 359-81 *see also* Restraint of trade
- effect of 333
- collateral remedies 387
 - contract illegal per se 386-7
 - fundamental principle 381-2
 - guilty parties, on 383
 - innocent parties, on 383-4
 - parties, intention of 383-6
 - subsequent illegal performance, where 384
 - variation in 381
- gaming contract *see* Gaming contract
- ignorance of law:
- no defence, as 385
 - performance legal, where 385-6
- innocent parties:
- illegal act, commission of 384
 - remedies 383
- money paid, recovery of:
- class protecting statutes, under 391
 - equitable interest, claims based on 395-7
 - fraud, entry into contract induced by 392
 - genuine withdrawal, on 390-1
 - illegal purpose not yet carried into effect 389-91
 - marriage brokerage contracts 391
 - merits, balancing 393
 - mistake, where 392-3
 - oppression and duress, where 392
 - parties not *in pari delicto*, where 391-3
 - plaintiff not relying on contract, where 394-7
 - refusal of 391
 - rule of law 388
- nature of 20
- passing of property 394
- per se 386-7
- property transferred, recovery of:
- class protecting statutes, under 391
 - equitable interest, claims based on 395-7
 - fraud, entry into contract induced by 392
 - genuine withdrawal, on 390-1
 - illegal purpose not yet carried into effect 389-91
 - legal title, claims based on 394-7
 - mistake, where 392-3
 - oppression and duress, where 392
 - parties not *in pari delicto*, where 391-3
 - plaintiff not relying on contract, where 394-7
 - refusal of 391
 - rule of law 388
- public conscience test 382
- refusal by court to enforce contract 336
- repudiation of purpose 389-90
- restitution of benefits transferred under 388-97
- severance:
- agreement, not to alter 402
 - blue pencil rule 400-1
 - criteria for, changing 398
 - effect of 403
 - employer-employee covenants 400
 - illegal or void condition, of 398
 - main consideration, illegal promise not to form 401
 - nature of contract, altering 403
 - one-sided 403
 - public policy 398-400
 - requirements for 400-2
 - true 403
- statutory:
- penalty, imposition of 335-8
 - performance, relating to 334-5
 - purpose of 336
 - statutory prohibition, effect of 334-7
 - unenforceable, contract being 334
 - void, contract being 336
- Implied contract 29
- Implied terms:
- business efficacy, for 144-6
 - cases for implication of 143
 - common law 6
 - common relationship, in 143-4
 - standardized terms 146-8
- custom, by:
- binding effect, having 149
 - certain and uniform course of conduct, as 149
 - exclusions 148
 - illustrations 148
 - notoriety 149
 - reasonableness 149-50
- default rules, as 147
- easement, implied 147

- Implied terms (*cont.*):
 hire-purchase contracts, in 156
 intention, implication depending on 143
 necessity for 144-6
 obvious 145
 reasonableness 145
 sale of goods *see* Sale of goods
 statutory 6
 supply of goods and services, contracts for 156
- Impossibility of performance *see* Breach of contract; Frustration
- Incapacity:
 corporations *see* Corporations
 consequences of 203
 mentally disordered person, of 229-31
 minors, of *see* Minors
 persons suffering 203
 refusal to enforce contract in case of 203
- Indebitus assumptis*:
 action of 14
- Indemnity:
 assessment of 247
 contract of guarantee distinguished 79
 damages distinguished 248
 loss incurred as result of criminal or tortious act, against 350
 unreasonable clauses 187
- Industrial revolution:
 British economy, change in structure of 1
- Ineffective contract:
 money paid, recovery of, 203, 211, 228
- Inequality:
 bargaining power, of 165, 289-90
- Infants *see* Minors
- Injunctions:
 laches, effect of 619
 mandatory 603
 prohibitory:
 breach of negative stipulation, restraining 601
 contracts of personal service, not appropriate for 601-2
 grant of 601
 negative undertaking, effect of 602
 practical realities of 603
 types of 600
- Insurance:
 basis of contracts clause 260-1
 contracts:
 disclosure, duty of 259-61
 frustration, effects of 533
 gaming contract, as 338
 marine 259-60
 non-marine 260
 third parties, for benefits of 420-1
 life, assignment of policy 452
 marine:
 assignment of policy 452
 statutory provisions 259-60
 writing, requirement of 78
 reasonableness requirement 193
 road traffic, third party rights 420-1
 wife and children, on life for benefit of 421
- Intention of parties:
 construction of contract *see* Construction of contract
- Intention to create legal relations:
 dispute as to 71-3
 family arrangements, exclusion of 71-3
 objective test of 71-3
 offer intended to effect 70
 social engagements, exclusion of 70-2
- Interest:
 damages, on 586
 Intermediate terms 138-41, 542-9
- Interpretation *see* Construction of contract
- Invitation to treat 33-5
- Investment business:
 duty of disclosure 264, 268
- Jurisdiction:
 agreements ousting 358-9
- Know-how:
 agreements protecting 367
- Laches:
 equitable claims, application to 619
- Land:
 contracts concerning:
 imposition of contractual liabilities on third parties 431
 third parties, acquisition of contractual rights by 423-5
 covenants:
 assignment of 471
 restrictive 374-5, 431
 running of benefit of 423
- Land, sale or disposition of:
 collateral agreements 82-3
 contract for:
 form required 83-8
 non-compliance with requirements, effect of 85
 oral 85
 parties 84
 signature 84
 subject-matter 84
 void, performance of 86
 equitable mortgage, validity of 82
 estoppel 86-7
 formal requirements 75
 frustration 526
 interest in, definition 82
 lock-out agreement 82
 misdescription 266-7
 non-disclosure 266-7
 option, grant of 82
 restitutionary obligations 86-8
 single document, terms in 82, 84-5
 specific performance 597
 statutory provisions 83
 supplementary agreements 82-3
 writing, requirement of 81-8

- Law Commission:
 codification project 17-18
 contract, work on 18, 81, 131, 261, 427, 583-4,
 605-7, 613-14
 Recommendations, Law Com. No. 69 (1975)
 182
 Scottish Law Com. No. 39 (1975) 182
 Report, No. 104 (1980) 261
 Report, No. 121 (1983) 485, 486, 489
 Report, No. 134 (1984) 225
 Report, No. 160 (1987) 150
 Report, No. 242 (1996) 407, 414, 416, 420, 427,
 428
- Law Reform Committee:
 Seventh Report, 1958 (Cmd. 501) 585
 Eighth Report, 1958 (Cmd. 622) 77
 Tenth Report, 1962 (Cmd. 1782) 243, 253,
 254
 Twelfth Report, 1969 (Cmd. 2958) 316
- Law Revision Committee:
 Sixth Interim Report, 1937 (Cmd. 5449) 79, 92,
 109, 124, 421, 422, 427
- Lease:
 frustration 524-6
- Legal relations:
 intention to create *see* Intention to create legal
 relations
- Legal rights:
 promise not to insist on 74
- Letters of credit:
 third parties, acquisition of contractual rights by
 422
- Lien:
 agent, of 641
- Limitation of actions:
 acknowledgement, effect of 618
 concealment, effect of 617-18
 disability, persons under 617
 equitable relief, statutory periods not applying
 to 619
 fraud, effect of 617-18
 general rule 616-17
 laches 619
 law, policy of 616
 mistake, effect of 617-18
 once and for all and continuing breaches
 compared 617
 part payment, effect of 618
 remedy, barring 618
- Liquidated damages:
 penalty distinguished from 587-92
- Loans:
 wagering and gaming, for 346-8
- Lunacy *see* Mentally disordered person
- Maintenance:
 bare right of action, no assignment of 459
 crime and tort, abolition of 356
 illegal contract of 354
- Marine insurance *see* Insurance
- Market price:
 sale of goods 577-8
- Marriage:
 agreements affecting freedom or security of,
 illegality 357-8
 breach of promise 357
 brokerage contracts 357, 391
 separation, agreement for 358
- Maxims:
caveat emptor 152, 266
delegatus non potest delegare 638
de minimis non curat lex 476
ciusdem generis 158
*ex antecedentibus et consequentibus fit optima
 interpretatio* 158
ex turpi causa non oritur actio 382
expressio unius est exclusio alterius 158
ignorantia juris haud excusat 385
in pari delicto potior est conditio defendentis 388,
 389, 391, 392, 393
locus poenitentiae 389, 391
potior est conditio defendentis 382
quantum meruit 610, 611, 613, 614
qui facit per alium facit per se 641
res perit domino 533
scriptum predictum non est factum suum 318, 319,
 320, 321
ut res magis valeat quam pereat 63, 158, 650
*verba charatarum fortius accipiuntur contra
 proferentem* 159, 167
- Measure of damages *see* Damages
- Mentally disordered person:
 contractual capacity 229-31
- Minors:
 age of majority 211
 agent, capacity to be 623
 contracts by:
 apprenticeship, of 214-15
 beneficial 214-16
 common law rules 211-12
 disclaimer, requiring 211, 216-18
 effect of disclaimer 218
 employment, of 214-15, 219
 necessities, for 211-14
 negative voidable 211-12, 216, 220
 option of minor, voidable at 211-12
 positive voidable 211, 216-18, 220
 property, relating to 216
 rights and liabilities 211
 third parties, effect on 225
 time of disclaimer 217
- liability of:
 contractual 218-20
 nature of 218-20
 necessities, for 218
 positive and negative voidable contracts, for
 220
 qualified enforceability 220
 restitution, in 221-5
 tort, in 220-1
 partner, as 217
 restitution in favour of 225
 restitution, liability in:
 common law 221-2

- Minors (*cont.*):
 restitution, liability in (*cont.*):
 equitable 222-4
 fraud by minor, in case of 224
 full age, fraudulent misrepresentation of 222
 identity of property, loss of 223
 statutory provisions 224-5
- Misrepresentation:
 active concealment 234
 agent, through 644-7, 650-1
 ascertaining truth of, opportunity for 239
 commendatory expressions, nature of 235-7
 effect of 232
 exclusion of liability for:
 avoidance of provisions 256-7
 common law, at 255
 statutory provisions 255-7
 Unfair Terms in Consumer Contracts
 Regulations, control by 257
 exemption clause, contents or effect of 181
 foreign law, of 237
 fraudulent:
 damages, measure of 241-2
 deceit, damages for 232
 effect of 239
 false impression, giving 240
 falsity, knowledge of 240
 fraud, meaning 239
 full age, of 222
 reasonable grounds for believing 240
 remedies for 240
 influence, need for 238
 innocent:
 common law, at 246
 equitable remedies 246
 executed contracts, relating to 254
 indemnity 247-8, 254
 meaning 246
 remedies for 246
 rescission of contract for 247
 specific performance, as defence to action for 246
 intention or prediction, expression of 236
 law, of 236-7
 liability, requirements of:
 contract, inducing 238-9
 fact, representation of 235-7
 false representation, making of 233-4
 party misled, addressed to 237
 loss caused by, damages for 232
 mere puffs 233
 negligent:
 action for 17
 common law, at 242
 damages, measure of 243-5
 duty of care 244
 fraud, equation with 244-5
 fraud, not amounting to 240
 statutory provisions 243
 non-disclosure, overlap with 232
 operative, meaning 233
 opinion, not of 235-7
 partial non-disclosure 234
 planning permission, as to 237
 private rights, of 237
 prospectus, in 237
 rescission, remedy of 248-55 *see also* Rescission
 remedies 233
 statutory provisions 198
 term of contract, as 233, 254-5
- Mistake:
 attitude of judges to 294
 common law, at:
 equity, relationship with 322-3
 expression, of 295
 failure of expression 296
 genuine agreement, absence of 306-22
 mutuality, want of 296
 operative, cases of 296
 root of contract, going to, 296-306
 doctrine, absence of 297
 entry into illegal contract induced by 392-3
 equitable remedies 295
 equity, in:
 common law, relationship with 322-3
 effect of 322
 remedies 322
 rescission of contract 327-31 *see also*
 Rescission
 specific performance, refusal of 324
 written contract, rectification of 324-7
 genuine agreement, absence of:
 attributes of party, as to 313
 blank, documents signed in 321
 cross-purposes, parties at 307
 essentially different transaction, effecting 319-20
 identity of party, as to 311-18
 known to other party 309-11
 non est factum 318-22
 objective test 306-7
 offer and acceptance not corresponding 306-8
 party signing, negligence of 321
 promise, as to 308-11
 same name, two things having 307-8
 unknown to other party 309
 void, contract being 307
 written document, as to 318-22
 law of 236, 296, 385, 393
 legally operative, effect of 294
 limitation of actions, effect on 617-18
non est factum 318-22
 objectivity, reliance on 294
 root of contract, going to:
 consideration, failure of 300
 construction 298-9
 false and fundamental assumption 304-6
 instances of 299
 invalidity, implied term as to 298
 mutual 296-7
 negligence, effect of 306
 quality of thing contracted for, as to 302-4
 subject-matter, non-existence of 299-301
 substance, as to 303
 title, as to 301-2

- Money paid, recovery of:
 - frustration 529
 - illegal contract *see* Illegal contract
 - ineffective contract 203, 211, 228
 - innocent party, by
 - entitlement to 604-7
 - partial failure of consideration, on 606-7
 - total failure of consideration, on 605-6
 - party in breach, by:
 - advance payment of contract price, of 607-8
 - deposits and security payments 608-10
 - rule, reasons for 605
- Monopolies and Mergers Commission 381
- Mortgage:
 - equitable, validity of 82
- Necessaries:
 - contract for 211-14
 - liability of minor for 218
 - loan of money got 214
 - meaning 212-14
 - mentally disordered or drunken person, delivery to 231
- Negligence:
 - contributory 583-4
 - exclusion of liability for:
 - alternative non-negligent ground of liability, where 168
 - construction, rules of 167
 - legislation, restriction by 167
 - only possible liability for negligence, where 169
 - frustration of contract, causing 524
 - liability, restrictions on power to exclude 186-7
 - misrepresentation *see* Misrepresentation
 - mistake, effect on reliance on 306
 - person seeking to rely on exclusion clause, by 193
- Negligent misstatement:
 - damages for 128, 243, 564
 - liability for 242
- Negotiable instruments:
 - assignment under common law 447
 - bills of exchange 464
 - cheques 463
 - consideration 466
 - past 95
 - person furnishing 96
 - custom:
 - negotiable by 465
 - terms implied by 148
 - holder in due course 467
 - limitation of negotiability 467-8
 - negotiability 462-3
 - notice, no need for 466
 - payment by 479-80
 - principal not liable on 642
 - promissory notes 464
 - title to 466
 - types of 463-6
- Non-disclosure:
 - future of 267-9
 - insurance contracts, in 259
 - misrepresentation, overlap with 232
 - partial 234
 - partnership contract, formation of 266
 - remedies for 259
 - sale of land, contracts for 266-7
 - scope of rule 267
 - suretyship, contracts of 265
 - utmost good faith, requirement of 232
 - Non est factum* 318-22
- Notice:
 - assignment, of:
 - equitable 454
 - Law of Property Act, under 451
 - negotiability distinguished 466
 - contracts terms, of *see* Terms
- Novation:
 - contract, of 462
- Objectivity 31, 310
- Offer:
 - acceptance coinciding with 38
 - acceptor to have knowledge of 49-50
 - advertisement distinguished 33
 - battle of the forms 39-40
 - carriage of persons, contract for 34
 - communication of 36-7
 - counter-offer 38
 - cross-offer 36
 - definition 32
 - general 35-6
 - information, supply of 32-3
 - intention to create legal relations 70
 - invitation to tender, and 34
 - invitation to treat distinguished 33-5
 - lapse:
 - express or implied condition as to 60
 - fixed time, offer for 59
 - no fixed time, where 60
 - passing of time, due to 59
 - machine, transaction effected through 34
 - mistake as to 33, 306-8
 - need for 27
 - offeree, death of 61
 - offeror, death of 61
 - process of 28-9
 - rejection of 59
 - revocation:
 - acceptance, before 52
 - acceptance, impossibility after 52-3
 - auction sales without reserve, in 55-7
 - communication of 57-9
 - deed, offer in 55
 - firm offers, of 54-5
 - intention as notice of 58
 - knowledge of offeree 58
 - mind of offeree, brought to 58
 - property, sale of 57
 - rules 52
 - unilateral contracts 53-4
 - services, by rendering 36

- Offer (*cont.*):
 termination:
 death of offeror or offeree, by 61
 lapse, by 59-61
 means of 52
 rejection, by 59
 revocation, by 52-9
- Option:
 firm offers, and 54
 vendor of land, grant by 82
- Package holidays 18, 145, 190, 198, 244, 268, 413
 third parties, acquisition of contractual rights by 422
- Parliamentary funds:
 provision for payment from 204
- Parol evidence rule 130-1
- Part payment:
 limitation, effect on 618
 third party, by 110
- Part performance:
 entire obligation, of 484-9
 inconvertible benefit from 489
 injured party, acceptance by 488-9
- Partner:
 minor as 217
- Partnership:
 contractual capacity 229
 formation of contract, non-disclosure 266
 ostensible authority 629
- Patent:
 assignment of rights 447, 452
 imposition of contractual liabilities on third parties 433
- Patient:
 contractual capacity 229-31
 meaning 230
- Payment:
 cash, in 478
 charge card, by 480
 complete performance by 478
 credit card, by 480
 documentary credit, by 479-80
 duty of 480
 interbank transfer, by 479
 mode of 478
 negotiable instrument, by 479-80
 receipts 480
 tender of 483-4
- Penalty:
 liquidated damages distinguished from 587-92
 statute, for breach of 335-8
- Performance of contract:
 alternative modes of 481-2
 attempted 483-4
 bad or incomplete, right to cure 482
 complete, failure to make 484
 contract options 481-2
 deviation from terms 475-6
 early actions 11
 entire and divisible obligations 485-7
 failure of 537, 545-50 *see also* Breach of contract
 non-performance, excuses for 7
 partial:
 entire obligation, of 484-9
 inconvertible benefit from 489
 injured party, acceptance by 488-9
 payment *see* Payment
 performance options 482
 place of 478
 precise and exact, to be 475
 release, abandonment by 491
 strict standard of 475
 substantial, doctrine of 487-8
 tender, by 483-4
 time of:
 common law stipulations 476
 equity, stipulations in 476
 essence, of 477
 Law of Property Act, provisions of 476-7
 mercantile contracts 477-8
 vicarious 480-1
- Personal contract:
 assignable, not 460
 death, effect of 508
 injunctions not appropriate for 601-2
 specific performance not appropriate for 598
- Persons under disability:
 contractual capacity 229-31
 limitation of actions 617
- Planning permission:
 misrepresentation as to 237
- Power of attorney:
 enduring 658
 instrument creating 658
 third party, given to 448
- Price *see also* Consideration:
 fair, no doctrine of 97
 reasonableness 64
- Principal:
 agent acting as 651
 bill of exchange, not liable on 642
 capacity to contract 626
 death of 655-6
 duties of 639-41
 existence, in 626
 foreign 642, 650
 intervention as contracting party 643
 mental incapacity of 656-7
 named or identifiable, to be 625
 non-existent, contracting for 650
 remuneration, paying 639
 rights and liabilities, limitations on 642-4
 set-off against 644
 third parties, relationship with 641-8
 undisclosed 642, 652
 liability of 629-30
- Privity of contract:
 acquisition of contractual rights by third parties:
 adoption, notion of 429
 agreed sum, action for 415
 commercial practice, effect of 421-3

- consideration, provision of 410
- contractual rights, trusts of 417-20
- critique of 426-9
- defences 428
- doctrine of consideration, relationship with 409
- enforceable benefit, test of 428
- exceptions and circumventions of rule 416-26 *see also* Agency, Assignment
- general rule, development of 407-9
- insurance contracts 420-1
- intended legatees, by 425
- land, contracts concerning 423-5
- letters of credit, relating to 422
- loss sustained by promisee, damages for 411
- loss sustained by third party, damages for 412-14
- money paid, recovery of 415
- other legal systems, in 427
- package holidays, contract for 422
- present status of rule 409-10
- promise not to sue 415-16
- promisee, remedies of 410-16
- specific performance, order for 414-15
- statutory reform, proposals for 427
- tortious duties of care, contracts giving rise to 425-6
- trust of promise 417-20
- variation and cancellation 428-9
- agency, in 638
- agent employed to establish 648
- assumption of risk 444-5
- consideration distinguished 95
- exemption clauses *see* Exemption clauses
- implied contract 443-4
- imposition of contractual liabilities on third parties:
 - bailment 434
 - building contracts 430
 - charterparty, ships under 435-7
 - chattels and personal property, contracts concerning 431-8
 - exceptions to rule 430
 - general rule 430
 - hire agreements 438
 - hire-purchase agreement, under 438
 - intellectual property 433
 - land, contracts concerning 431
 - resale price maintenance 432-3
 - use of chattels, restrictions on 437-8
- negation of duty 444-5
- scope of obligation 407
- specified act, contract by performing 442-3
- Promise:
 - actionability, test of 91
 - moral obligation to fulfil 91
- Promissory estoppel:
 - accord and satisfaction, in relation to 492
 - cause of action, founding 121-2
 - clear and unequivocal promise, requirement of 113
 - consideration, as alternative to 110
 - development, reasons for 123-4
 - English, nature of 15
 - equitable principle 110-11
 - estoppel by convention distinguished 120
 - existing duty, effect on 111-17
 - existing or past fact, representations of 112
 - extension of doctrine 117
 - extinguishing existing obligation 115-17
 - formation of contracts, and 117-22
 - legal enforceability of promise, routes to 117
 - no new cause of action created, restriction to situations of 118
 - principle of 111-13
 - promisee, alteration of position by 114-15
 - promisor going back on promise, inequitable nature of 113
 - proprietary estoppel, distinguished from 119
 - reasonable renegotiations, protection of 274-5
 - scope of principle 113
 - shield, as 117
 - suspensive effect of 115-17
 - temporary effect of 116
 - terms and intent of promise, effect depending on 116
 - waiver:
 - more limited than 499
 - similarities to 111
- Promissory notes:
 - discharge of 492
 - negotiable instrument, as 464
- Proof, burden of:
 - exemption clauses 179
 - restraint of trade, reasonableness of 363
 - unfair contract terms, reasonableness 191
- Property:
 - revocation of offer to sell 57
 - sale subject to contract 68-9
 - tort, protection of rights by 22
 - transfer of rights 22-3
 - validity of rights in 22
- Property law:
 - law of obligations distinguished 22
- Proprietary estoppel:
 - basis of 119
 - promissory estoppel, narrower than 119
 - where arising 118-19
- Prospectus:
 - duty of disclosure 263-4
 - misrepresentation in 237
- Prostitution:
 - agreement as to, enforcement 357
- Public authorities:
 - contracting functions, exercise of 210
 - contracts by:
 - statutory controls 208
 - statutory purpose, incompatibility with 208-9
 - defect in procedure of 209-10
 - freedom of contract, limitation of 210
 - legitimate expectation, fulfilling 210
 - obligation to carry out statutory powers or duties, not estopped from carrying out 209
 - powers, fettering 209

- Public authorities (*cont.*):
ultra vires, doctrine of 208
 void contracts, recovery of payments under 211
- Public policy:
 contracts illegal at:
 common law 348-9
 severance 398-400
 restraint of trade *see* Restraint of trade
- Quantum meruit see also* Restitution:
 anticipated contracts 30, 46, 64-5
 claim for 551
 contractual claims 610-11
 damages, comparison with 612-13
 frustrated contract, for 530-1
 goods and services, as recompense for 610
 innocent party, restitutional claims by 611-13
 party in breach, restitutionary claims by 613
 recovery of 604
- Quantum valebat*:
 recovery of 604
- Quasi-contract:
 non-contractual liability 16
- Racial discrimination:
 statutory restrictions 5, 34, 334, 336, 599
- Ratification:
 agent's authority, of:
 capacity of principal to contract 626
 existence of principal 626
 manner of 627
 means of 624-5
 principal to be named or identifiable 625
 time of 627
 Vienna Convention on International Sales
- Reasonableness *see also* Misrepresentation; Unfair Contract Terms Act; Unfair Terms in Consumer Contracts Regulations 18
 agreed damages clauses 587
 certainty of terms, and 63
 exemption clauses, and 182
 implied terms, and 149
 mitigation, and 582, 294-5
- Rectification:
 mistake, after:
 clear evidence of 325
 conditions for 325
 continuing intention 325
 full and final agreement 325
 literal disparity 325-6
 mutual 324-6
 unilateral 326-7, 332
- Release:
 discharge by 491
- Remedies for breach *see* Damages; Injunctions; Penalty; *Quantum meruit*; Restitution; Specific performance
- Representation:
 agent, by 627, 644-7
 contract terms, and 125-8
 meaning 126, 233
 misrepresentation *see* Misrepresentation
 term of contract, as 233
- Repudiation:
 election to accept, effect of 538
 fundamental breach, as 172
 purpose, of 389-90
 sums falling due, before 594-5
 unaccepted, limited effect of 536-7
- Reputation:
 loss, damages for 562-3
- Resale price maintenance:
 imposition of contractual liabilities on third parties 432-3
- Rescission:
 abandonment 493
 agreement, by 492
 communication of 248
 damages in lieu of:
 discretion to award 252-3
 measure of 253-4
 form of discharge 494
 indemnity, assessment of 247
 innocent misrepresentation, for 247
 just allowances, making of 251
 limitations on right of:
 ability to restore 250-1
 affirmation 249, 285
 executed contracts 254
 lapse of time 250
 partial, no power to award 251-2
 term of contract, misrepresentation incorporated as 254-5
 third parties, rights of 250
 misrepresentation, in case of 248-55
 mistake, after:
 fault, absence of 320-30
 fundamental 329
 inequitable to rely on contract, where 329
 mutual 327-31
 terms, setting aside on 330
 unconscionability, requirement of 331
 unilateral 331-2
 mode of 248
 partial, no power to award 251-2
 right to:
 misrepresentation, in case of 248
 undue influence, in case of 284
 substitution of terms or parties, by 495
 third parties, interests of 286-7
 time for determining entitlement to 253
 undue influence, in case of 284-7
 variation distinguished 494-6
- Restitution:
 anticipated contracts, and 40, 64, 68
 awards in nature of 604
 claim in 22
 complete, impossibility of 284
 contract, independent of 22
 contract-breaker, by 605-10, 613-14
 damages 614-15
 duress 272
 entire obligations, and 486-8

- frustration, on 528-31
- illegal contracts *see* Illegality
- innocent party, by 604, 611-12
- land, agreement concerning 86-8
- minors, in favour of 225
- minors, liability of:
 - common law 221-2
 - equitable 222-4
 - fraud by minor, in case of 224
 - full age, fraudulent misrepresentation of 222
 - identity of property, loss of 223
 - statutory provisions 224-5
- money paid under void contract, recovery of 203, 211, 228
- non-contractual liability 16
- obligations in 21
- recompense, services for 40, 64, 68, 221-5, 610-13
- recovery of money paid *see* Money paid, recovery of
- ultra vires* contract, benefits conferred under 228
- unjust enrichment 21
- wager, money payable under 342
- where arising 9
- Restraint of trade:
 - agreement in, defined 359
 - change in law of 360
 - consideration 365
 - construction of covenants 363
 - contracts in, classes of 366
 - doctrine, history of 360-2
 - employer and employee, between:
 - area of 368
 - confidential information, protection of 367
 - duration of 366
 - employee's skill and experience, not inhibiting 367
 - employer, interests of 367
 - freedom to work after termination, reasonableness of 366
 - know-how, protecting 367
 - length of 369
 - nature of employment, relevance of 369
 - public interest, relevance of 369-70
 - scope of 368
 - severance 400
 - employers, agreements between:
 - football clubs, retain and transfer system 379
 - labour and services, for 378-81
 - services and professional bodies, relating to 380
 - enforcement of 362-3
 - exclusive dealing agreements:
 - Article 85, application of 376-7
 - forms of 377
 - land, restrictive covenants on 374-5
 - lease and lease-back 375-6
 - public interest test 377-8
 - solus* ties 374
 - extent of protection 364
 - general and partial 362
 - justification 363
 - land, restrictive covenants on 374-5
 - modern law of 362-3
 - monopolies and mergers 381
 - policy as to 361
 - reasonableness:
 - both parties, for 365
 - burden of proof 363
 - contracting parties, in interests of 363-5
 - legitimate interests of covenantee, protecting 363
 - public, in interests of 363, 265-6
 - time of 365
 - reformulation of doctrine 361
 - trade unions, protection of 379
 - traditional categories of 360
 - vendor and purchaser of goodwill, between cartels 370-4
 - exclusive dealing agreements 374-8
 - horizontal trading agreements 370-4
 - scope of 370
- Restrictive trade practices:
 - services subject to provisions 380
- Revenue:
 - agreement to defraud, illegality 350
- Revocation:
 - acceptance, of 51
 - offer, of *see* Offer
 - offer to sell property, of 57
- Reward:
 - advertisement 35-6
 - consideration 92
- Sale of goods:
 - breach of warranty 580-2
 - conditions and warranties, statutory definition of terms as 139
 - damages, assessment of:
 - breach of warranty, for 580-2
 - delay in accepting delivery, for 580
 - late delivery, for 578
 - loss of profit, for 581
 - non-acceptance, for 579
 - non-delivery, for 577
 - reliance loss 581
 - statutory provisions 577
 - sub-sales 580-1
 - delay in accepting delivery 580
 - exemption clauses, construction of 174
 - frustration of contracts 511
 - effects of 533
 - implied terms:
 - description, sale by 151-2
 - fitness of goods, as to 154-5
 - negating 150
 - sample, sale by 155-6
 - satisfactory quality, as to 152-5
 - statutory provisions 150
 - title, as to 150-1
 - variation of 150
 - international, rules for 32

- Sale of goods (*cont.*):
 late delivery 578
 necessities 212-13
 non-acceptance 579
 non-delivery 577
 specific performance 596-7
 Unfair Contract Terms Act, application of 187-8
 waiver of condition 142
- Sample:
 sale of goods by 155-6
- Services, supply of:
 implied terms 156
- Severance:
 illegal contract *see* Illegal contract
- Sex discrimination:
 statutory restrictions 5, 34, 334, 336
- Sexual immorality:
 illegal contract relating to 356-7
- Shares:
 allotment, duty of disclosure in contracts for 263-4
 assignment of 452
- Signature:
 contract for sale of land, of 84
 contract of guarantee, of 84
- Social engagements:
 intention to create legal relations, lack of 70-2
- Solicitor:
 agent, as 634
- Specific performance:
 activity, requiring carrying on over period of time 600
 constant supervision, requiring 599
 contracts not subject to 600
 contracts of personal service, not appropriate for 598
 discretionary remedy, as 324, 597
 inadequacy of damages, where 596-7
 innocent misrepresentation as defence to 246
 laches, effect of 619
 mistake in equity, effect of 324
 order for 595
 result, achieving 600
 sale of goods 596-7
 sale of land 597
 transitory interest, where 600
 unsuitability of obligations 599-600
 want of mutuality, effect of 598
- Standard form contracts 5, 36, 159-60
 battle of, 39-40
 terms in 125
- Statute of Frauds:
 contract of guarantee under 79-81
 requirements under 75, 78-9
 sale of land, contracts for 81
- Stock Exchange transactions:
 gaming, as 339
- Supply of goods *see also* Sale of goods:
 Unfair Contract Terms Act, application of 188
- Supply of goods and services:
 implied terms 156
- Suretyship:
 contracts of, non-disclosure 265
- Tax:
 damages, element in 585
- Tender:
 acts, of 483
 announcement inviting 34
 attempted performance, as 483-4
 early 484
 payment, of 483-4
- Terms:
 ascertainment of:
 executed transactions, for 64
 machinery for 65
 previous transaction, from 63
 reasonableness, standard of 63-4
 trade custom, from 63
 certainty of:
 agreements not to negotiate 65-7
 agreements to negotiate 65-7
 courts, approach of 62-3
 imposition of agreement 63
 machinery for ascertainment 65
 need for 62
 conditions *see* Conditions
 construction *see* Construction of contract
 consumer contracts, unfair terms in:
 exclusions from 196
 fairness, test of 197-8
 good faith, assessment of 291-2
 good faith, test of 198
 Regulations, scope of 196, 281
 significant imbalance, concept of 292
 test of fairness 291-3
 contractual intention, test of 126-7
 exemption clauses *see* Exemption clauses
 express:
ab initio classification, evaluation of 137
 certainty as to nature of 137
 innominate 132, 138-41
 intermediate 132, 138-41
 string contracts, in 137
 types of 132
 extrinsic evidence of 130-1
 fairness, requirement of 291
 fundamental:
 breach *see* Breach of contract
 meaning 171
 implied *see* Implied terms
 meaningless 65
 parol evidence of 130-1
 printed, notice of:
 adequate 160
 communication of 162
 contract, contemporaneous with 161
 contractual document, in 165
 exhibition of 164
 face of ticket, reference on 164
 meaning 162
 reasonable sufficiency of 162-4
 unusual terms 163-4

- proof of 125-31
 representations, and 125-8, 233
 standard form document, in 125
 standard, use of 159-60
 exemption clauses *see* Exemption clauses
 reasonableness requirement 166
 statutory provisions 150
 warranties *see* Warranties
- Theories of contract:
consensus 4, 26, 42, 45, 59, 162, 218, 294, 306
 objective 31, 36, 71, 156, 170, 294, 318, 513
 will, in terms of 4
- Third parties:
 agent, relationship with 648-53
 agent, settlement with 648
 assumption of risk 444-5
 contractual right and liabilities of *see* Privity of contract
 exemption clauses:
 benefits under 439-40
 burden of 440-6
 negation of duty 444-5
 principal, relationship with 641-8
- Time:
 contract by minor, disclaimer of 217
 determining entitlement to rescission, for 253
 lapse, effect on rescission 250
 offer, of *see* Offer
 performance, of *see* Performance of contract
 ratification of agent's authority, of 627
 reasonableness of restraint of trade, of 365
- Title:
 assignees, of 456-8
 covenants for 156
 implied terms 150-1
 limited 151
 mistake as to 301-2
 negotiable instrument, to 466
- Tort:
 agreement to commit, illegality 349-50
 assumption of responsibility 21
 contract, concurrence of claims in 21-2
 damages, assessment of 241
 duties, of care to third parties, contracts giving rise to 425-6
 early actions 10-12
 minor, liability of 220-1
 non-contractual liability 17
 obligations in 21
 privity of contract, restriction by 17
 property rights, protection of 22
 remoteness of damage 570-2
- Trade union:
 contractual capacity 229
 doctrine of restraint of trade, protection from 379
 member, improper expulsion of 229
- Trading with enemy:
 illegal 351, 388, 399, 655
- Trespass:
 broken covenant, action for 13
 early actions 10
- Trust:
 contractual rights, of 417-20
 intention to create 418-20
 promise, of 418
- Urberrimae fidei* contracts *see* Disclosure
- Ultra vires*:
 benefits conferred under contract, restitution of 203, 211, 228
 capacity of corporations, limiting 226
 existence of rule, explanation for 226
 public authorities subject to doctrine of 208
 purpose of rule 208
 statutory modification of doctrine 227
- Uncertainty of terms 62-7
- Unconscionable bargains:
 consumer contracts, unfair terms in 291-3
 credit agreements 290
 doctrine of 270
 unconscionable dealing:
 catching bargains 288
 elements of 288
 expectant heirs, protection of, 288
 inequality of bargaining power 289-90
 justification, burden of 287
 serious disadvantage, party at 288
 undervalue, purchase at 288
 weakness, exploitation of 288
- Undisclosed principal *see* Principal
- Undue influence:
 actual 279
 effective consent, vitiating 285
 form of unconscionable dealing, as 278
 nature of 278
 occurrence of 270
 presumed:
 gifts, as to 282
 husband and wife, in case of 280
 manifest disadvantage, requirement of 283
 nature of relationship 280-2
 rebutting presumption 283-4
 relationship of confidence, where 279-80
 transaction, nature of 282-3
 trust and confidence, relationships of 281
 rescission of contract 284-7 *see also* Rescission
 voidable, transactions being 286
- Unenforceable contract 20, 334
- Unfair Contract Terms Act 1977:
 control, pattern of 184
 effect of 195
 exemption clauses, application to *see* Exemption clauses
 non-contractual notices under 182
 reasonableness requirement 166
 application of test 192-5
 burden of proof 191
 clarity, factor of 193-4
 contracts of sale, relating to 192
 court, powers of 195
 damage, ratio to price 194
 factors taken into account 192
 guidelines 191

- Unfair Contract Terms Act (*cont.*):
 - reasonableness requirement (*cont.*):
 - insurance, cover by 193
 - negligence by party relying on clause, factor of 193
 - specified sum of money, restriction of liability to 191
 - test 190-1
 - scope of 182
 - unreasonable indemnity clauses, prohibiting 187
- Unfair Terms in Consumer Contracts
 - Regulations:
 - Directive, purpose of 18
 - fairness, test of 197, 291
 - good faith, requirement of 198, 291-2
 - scope 196
- Unilateral contracts 29
- Unincorporated associations:
 - contractual capacity 228-9
- Unjust enrichment:
 - restitutionary obligations 21
- Unsolicited goods:
 - acceptance of 48
- Utilities:
 - contracts for supply of 6
- Variation:
 - consideration for 495-6
 - effecting 494
 - form of 494-5
 - rescission distinguished 494-6
- Vienna Convention on International Sales 18, 32, 40, 46, 47, 53, 55, 58, 63, 109, 139
 - ratification, consideration of 18
- Void contract:
 - Gaming Act, under 20
 - gaming *see* Gaming contract
 - illegality, for 336 *see also* Illegal contract
 - incapacity *see* Incapacity
 - mistake, for *see* Mistake
 - money paid under, recovery of 19, 203, 211, 228
 - nature of 19
 - public authorities, by 211
- Voidable contract:
 - mentally disordered or drunken person, by 230
 - minors, of *see* Minors
 - nature of 20
- Wager of law:
 - action of 10
- Wagering contract *see* Gaming contract
- Waiver:
 - consideration, not requiring 497-8
 - election, as 499-500
 - estoppel, as species of 498-9
 - form of 496
 - meanings 496
 - promissory estoppel, similarities of 111
 - risk, burden of 498
 - variation distinguished 497
- War:
 - frustration of contracts due to 506, 513
 - ships, requisitioning of 509
- Warranties:
 - breach of:
 - damages for 580-2
 - remedy for 132, 136
 - collateral 128-9
 - conditions, distinguished from 132
 - definition 136
 - express provision for 136
 - floating 129-30
 - nature of 136
 - representation as 233
 - statute, designation by 136
- Will:
 - intended legatees, acquisition of rights by 425
- Witness:
 - deed, to 76
- Writing:
 - assignment, needed for 451
 - bill of exchange, required for 78
 - consumer credit agreement, required for:
 - contract, required for:
 - discharge by agreement 490
 - evidence, as 78-9
 - examples of 78
 - land, for sale of 81-8
 - marine insurance, of 78
 - guarantee, contracts of 79-81
 - sale or disposition of land, contract 81-8