COMMERCIAL CONTRACT LAW

This book focuses on the law of commercial contracts as constructed by the US and UK legal systems. Leading scholars from both sides of the Atlantic provide works of original scholarship focusing on current debates and trends from the two dominant common law systems. The chapters approach the subject areas from a variety of perspectives – doctrinal analysis, law and economic analysis, and social-legal studies, as well as other theoretical perspectives. The book covers the major themes that underlie the key debates relating to commercial contract law: role of consent; normative theories of contract law; contract design and good faith; implied terms and interpretation; policing contract behavior; misrepresentation, breach, and remedies; and the regional and international harmonization of contract law.

Contributors provide insights on the many commonalities, but more interestingly, on the key divergences of the United States’ and United Kingdom’s approaches to numerous areas of contract law. Such a comparative analysis provides a basis for future developments and improvements of commercial contract law in both countries, as well as in other countries that are members of the common law systems. At the same time, insights gathered here should also be of interest to scholars and practitioners of the civil law tradition.

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This scholarly book brings together commercial and contract law scholars from both the United States and the United Kingdom. The impetus for this project was a symposium held on 9–10 September 2011 to celebrate the lifetime achievements in this field by Robert Bradgate, Edward Bramley Professor of Commercial Law Emeritus at the University of Sheffield, United Kingdom.
## Brief Contents

**PART I: THE ROLE OF CONSENT**

1. Transatlantic Perspectives: Fundamental Themes and Debates  
   Larry A. DiMatteo, Qi Zhou, and Séverine Saintier  
   Page 3

2. Competing Theories of Contract: An Emerging Consensus?  
   Martin A. Hogg  
   Page 14

3. Contracts, Courts, and the Construction of Consent  
   Thomas W. Joo  
   Page 41

4. Are Mortgage Contracts Promises?  
   Curtis Bridgeman  
   Page 67

**PART II: NORMATIVE VIEWS OF CONTRACT**

5. Naturalistic Contract  
   Peter A. Alces  
   Page 85

6. Contract in a Networked World  
   Roger Brownsword  
   Page 116

7. Contract Transactions and Equity  
   T. T. Arvind  
   Page 146

**PART III: CONTRACT DESIGN AND GOOD FAITH**

8. The Duty to Draft Reasonably and Online Contracts  
   Nancy S. Kim  
   Page 181
9. Managing Change in Uncertain Times: Relational View of Good Faith
   Zoe Ollerenshaw

PART IV: IMPLIED TERMS AND INTERPRETATION

10. Implied Terms in English Contract Law
    Richard Austen-Baker

11. Contract Interpretation: Judicial Role Not Parties’ Choice
    Juliet P. Kostritsky

PART V: POLICING CONTRACTING BEHAVIOR

    Séverine Saintier

    Charles L. Knapp

14. Unfair Terms in Comparative Perspective: Software Contracts
    Jean Braucher

15. (D)CFR Initiative and Consumer Unfair Terms
    Mel Kenny

PART VI: MISREPRESENTATION, BREACH, AND REMEDIES

16. Remedies for Misrepresentation: An Integrated System
    David Capper

17. Re-Examining Damages for Fraudulent Misrepresentation: Towards a More Measured Response to Compensation and Deterrence
    James Devenney

18. Remedies for a Documentary Breach: English Law and the CISG
    Djakhongir Saidov
Brief Contents ix

19. The Irrelevance of the Performance Interest: A Comparative Analysis of “Keep-Open” Covenants in Scotland and England 466
   David Campbell and Roger Halson

PART VII: HARMONIZING CONTRACT LAW 503

   Qi Zhou

21. Europeanisation of Contract Law and the Proposed Common European Sales Law 529
   Hector L. MacQueen

22. Harmonization of International Sales Law 559
   Larry A. DiMatteo
Contents

Contributors  page xxi

Foreword by Rt. Hon. Lord Justice Maurice Kay  xxvii

PART I: THE ROLE OF CONSENT  1

1. Transatlantic Perspectives: Fundamental Themes and Debates  3
   I. Legacy of Rob Bradgate  3
      A. Commercial Contract Law in the United Kingdom and
         United States  4
         1. Statutory Interventions into the Common Law  4
         2. Divergence, Convergence, and Law Reform  5
      B. Major Themes  6
         1. Topical Preview  8
         2. Consent and Promise  8
         3. Theories of Contract, Networks, and Equity  8
         4. Discrete and Relational Contracting  9
         5. Implied Terms and Contract Interpretation  9
         6. Contract Law’s Regulatory Function  10
         7. Misrepresentation and Breach  11
         8. Contract and Sales Law Harmonization  11
   II. Conclusion  12

2. Competing Theories of Contract: An Emerging Consensus?  14
   I. Introduction  15
   II. The Competing Theories of Contract  17
      A. Contract as Based upon Promises  17
      B. Contract as Based upon Agreement  22
      C. Contract as Based upon the Reliance  26
Contents

B. OFT v. Lloyds TSB 122
C. The Eurymedon 124
D. Reasonable Expectations 126

III. The Basis for Network Effects: Consumer Contracts 127
A. The Nature of the Modern Regulation of Consumer Transactions 127
B. Networks and OFT v. Lloyds TSB 129
1. The Legislative Approach 129
2. The Courts’ Approach 130
3. The Boyack Hypothetical 131
4. Beyond OFT v. Lloyds TSB 132

IV. The Basis for Network Effects: Commercial Contracts 132
A. The Nature of the Modern Regulation of Commercial Transactions 133
B. The “Hoffmannisation” of Contract Law 134
C. Network Effects and The Eurymedon 135
D. Beware the Classical Inheritance 139
E. Big Businesses, Small Businesses, and Shopping Malls 140

V. The Basis for Network Effects: Private Contracts 142
VI. Conclusion 143
VII. Coda 144

7. Contract Transactions and Equity 146
I. Introduction 147
II. Equity in a Contractual Context 150
III. Equitable Principles and Contract Law 155
A. Restating the Issue 155
B. The Contractual Solution 156
C. The Equitable Approach 164
IV. The Domain of Equity 169
A. A Complex Transactional Web 173
B. The Difficulty of Dealing with the Obligation 174
C. A Relational Attempt to Deal with this Difficulty 174
D. Indeterminacy and Vulnerability 175
V. Conclusion 176

PART III: CONTRACT DESIGN AND GOOD FAITH 179

8. The Duty to Draft Reasonably and Online Contracts 181
I. Introduction 181
II. Modern Contracts and the Diminishing of Consent 184
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>III. Duty to Read</td>
<td>187</td>
</tr>
<tr>
<td>IV. Code as Law and Form as Function</td>
<td>190</td>
</tr>
<tr>
<td>A. Transactional Hurdles or “Contracts as Checkout Line”</td>
<td>194</td>
</tr>
<tr>
<td>B. Visualization Strategies or “Contracts as Road Signs and Traffic Lights”</td>
<td>198</td>
</tr>
<tr>
<td>C. Sensorial Landscaping or “Contracts as Neighborhoods”</td>
<td>199</td>
</tr>
<tr>
<td>V. Conclusion</td>
<td>200</td>
</tr>
<tr>
<td>9. Managing Change in Uncertain Times: Relational View of Good Faith</td>
<td>201</td>
</tr>
<tr>
<td>I. Introduction</td>
<td>201</td>
</tr>
<tr>
<td>II. Long-Term and Complex Outsourcing Contracts</td>
<td>202</td>
</tr>
<tr>
<td>III. A Limited Recognition of Good Faith</td>
<td>206</td>
</tr>
<tr>
<td>IV. Does the Restricted Approach to Good Faith Accord with Practice?</td>
<td>213</td>
</tr>
<tr>
<td>V. Theory of Relational Contract</td>
<td>214</td>
</tr>
<tr>
<td>VI. A Construct of Good Faith as Seen through a Relational Prism</td>
<td>216</td>
</tr>
<tr>
<td>A. The Extent of the Duty</td>
<td>217</td>
</tr>
<tr>
<td>B. Criticisms of the Construct</td>
<td>218</td>
</tr>
<tr>
<td>C. Should Such a Construct Be Accepted?</td>
<td>219</td>
</tr>
<tr>
<td>VII. Conclusion</td>
<td>220</td>
</tr>
</tbody>
</table>

| PART IV: IMPLIED TERMS AND INTERPRETATION | 223 |
| 10. Implied Terms in English Contract Law | 225 |
| I. Introduction | 225 |
| II. The Historical Development of the Implied Term | 226 |
| A. Historical Context | 226 |
| B. Creation of Implied Terms | 228 |
| III. Theoretical Context | 233 |
| IV. Concluding Remarks | 238 |
| 11. Contract Interpretation: Judicial Role Not Parties’ Choice | 240 |
| I. Introduction: Challenging Party Choice Theory | 241 |
| II. The Importance of a Judicial Interpretation Rule | 249 |
| III. Faulty Assumptions Underlie the New Formalists’ Opt-in Rule | 255 |
| IV. Reducing Party Costs and Risks | 263 |
| V. The Opt-in Rule Should be Justified Like any Other Common Law Doctrine | 268 |
| VI. Rawlsian Theory, Contextual Evidence, Consequentialist Analysis, Equity, and Probabilistic Models Support a Judicial Interpretation Rule | 272 |
### Contents

VII. Courts, Restatements, and Empirical Evidence Challenge

- Party Choice Theory
  - Jacob & Youngs: Should Goals Affect Interpretation? 275
  - Residual Uncertainty: Overall Objectives and Prospective Consequences 279
  - When Should Trade Usage Govern Meaning? 282

VIII. Conclusion 284

**PART V: POLICING CONTRACTING BEHAVIOR** 287


- Introduction 290
- The Different Interpretations on the Calculation of “Compensation” between France and UK 293
- Reconciling Compensation and Indemnity? 303
- Conclusion 307


- Introduction 309
- Mid-Twentieth-Century Development – the 1950s and 1960s 310
- Further Development – the 1970s and 1980s 313
- Unconscionability at the Dawn of the Twenty-First Century 314
  - Unconscionability as Applied to Mandatory Arbitration Clauses 315
  - Unconscionability in Non-Arbitration Cases – Doctrinal Developments
    - Adhesion Contracts 320
    - Sliding Off the Scale 322
    - Mutuality 324
  - Unconscionability in Action: Recent Examples
    - Sales and Leases of Goods 326
    - Service Contracts 327
    - Domestic Relations 328
    - Real Estate Transactions 330
    - Consumer Lending and Credit 333
- Conclusion 337
# Contents

14. Unfair Terms in Comparative Perspective: Software Contracts 339
   I. Introduction 340
   II. The Challenge to Contract Theory Presented by SFKs 343
   III. US Law Reform and Software Contracts 347
      A. Advance Disclosure and a Step for Active Assent 349
      B. Reducing the Impact of Product Flaws 351
      C. Remedies and Dispute Resolution 352
      D. Protecting Intellectual Property Rights 354
   IV. Unfair Terms in Comparative Perspective 359
      A. ALI Principles and the EU Unfair Contract Terms Directive: Differences 360
      B. ALI Principles and the EU Unfair Contract Terms Directive: Similarities 362
   V. Conclusion 364

15. (D)CFR Initiative and Consumer Unfair Terms 366
   I. Introduction 366
   II. Evolution of the (D)CFR Initiative 367
   III. Rationale for EU Private Law Consolidation 368
   IV. (D)CFR Initiative and the Effective Policing of Unfair Terms in Consumer Contracts 371
      A. National Judges' Elaboration of Europeanised Unfairness Standards 373
      B. Judicial Approach to Article 267 TFEU References 375
      C. (Non-harmonised) National Background Rules 377
      D. Towards a Multi-Dimensional Perspective 378
      E. Procedural Dimension: Collective Proceedings 379
   V. Conclusion 381

PART VI: MISREPRESENTATION, BREACH, AND REMEDIES 383

16. Remedies for Misrepresentation: An Integrated System 385
   I. Introduction 386
   II. Misrepresentation 387
   III. Rescission 389
      A. Rescission as a Self-Help Remedy? 390
      B. Practical Justice 390
      C. Rescission as of Right 390
      D. Indemnity 392
      E. Compensation 393
## Contents

F. When *Restitutio in Integrum* Is Impossible 394  
G. Partial Rescission 395  
H. Summary of Rescission 399  
IV. Damages 400  
   A. Tort Damages 401  
   B. Fraudulent Misrepresentation (Deceit) 402  
   C. Negligent Misstatement 403  
   D. Negligent Misrepresentation 404  
   E. Innocent Misrepresentation 409  
   F. Comparative Perspectives 413  
V. Conclusion – Integrating Damages with Rescission 414

17. Re-Examining Damages for Fraudulent Misrepresentation: Towards a More Measured Response to Compensation and Deterrence 416  
   I. Introduction 417  
   II. The Crucible of Misrepresentation 417  
   III. Fraudulent Misrepresentation and Causation 418  
   IV. Impact on Risk Allocation 422  
   V. Negligent Contractual Misrepresentation 423  
   VI. Accentuating the Punishment 424  
   VII. Exemplary Damages 426  
   VIII. Proportionality 427  
   IX. Further Dangers of the Compensation Myth 428  
   X. Availability of Exemplary Damages for Fraudulent Misrepresentation 430  
   XI. Wider Considerations 431  
   XII. Conclusion 432

18. Remedies for a Documentary Breach: English Law and the CISG 434  
   I. Introduction 435  
   II. Termination 436  
      A. Duality of the Rights to Reject and Terminate 436  
      B. Rejection or Termination 443  
      C. Rejection and Termination 448  
   III. Damages 460  
   IV. Conclusion 464

19. The Irrelevance of the Performance Interest: A Comparative Analysis of “Keep-Open” Covenants in Scotland and England 466  
   I. Introduction 467
Contents

II. Scots Law of Keep-Open Covenants 471
III. Why Would Commercial Parties Ever Seek Literal Enforcement? 479
IV. Enforcement of Keep-Open Obligations under the English Law 482
V. The Wisdom of Lord Justice Millet 486
VI. Supervisory Problems in the Law of Keep-Open Covenants 489
VII. Commercial Uniqueness Cases 494
VIII. Advice to English Landlords 495
IX. Changing the Default Law, Commercial Leasing, and the Irrelevance of the Performance Interest 496
X. Conclusion 501

PART VII: HARMONIZING CONTRACT LAW 503

I. Introduction 505
II. Default and Mandatory Rules: A Comparison 506
III. Justifications for the Harmonisation of European Contract Law 509
IV. Harmonisation of Default Rules 515
V. Harmonisation of Mandatory Rules 521
VI. Conclusion 527

21. Europeanisation of Contract Law and the Proposed Common European Sales Law 529
I. Introduction: Proposed Common European Sales Law 530
II. A Historical Scottish Perspective 539
III. Comparing the Proposed CESL with the UK Sale of Goods Act 545
A. Implied Terms or Rules 546
B. Quality Defined 547
C. Time of Conformity 550
D. Termination: The Right to Reject 552
E. Overview 556
IV. Conclusion 556

22. Harmonization of International Sales Law 559
I. Introduction 560
II. Goal of Harmonizing International Sales Law 560
A. Substantive Shortcomings 561
   1. Problem of Reservations 562
   2. Problem of Translation 563
B. Uniformity of Application and National Law Bias 564
   1. Nationally Biased Interpretations 564
   2. Uniformity Principle and the Problem of Divergent Interpretations 565
C. Widespread Approval and Widespread Disregard 570
III. Uniformity in Practice and the Problem of Scarcity 571
   A. Civil-Common Law Divide 572
   B. German Role in CISG Jurisprudence 572
   C. Understated Role of Unreported Arbitration Cases 574
   D. Summary 575
IV. Value of the CISG outside the Context of International Harmonization 575
   A. CISG as Customary International Law and as Soft Law 576
   B. Use as a Model National Law 577
V. Conclusion 578

Index 581
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It was a privilege for me to be invited to attend the symposium in Sheffield in September 2011 that has given rise to this book. I imagine the invitation was the result of my long association with the School of Law at Sheffield rather than any perception that I have current expertise in the comparative law of commercial contracts. However, I derived enormous benefit from my attendance.

The sharing of knowledge and expertise among legal experts from different jurisdictions is essential to the development of the law. It is also important that, at a time when the laws of the United Kingdom are more than ever influenced by developments in the European Union, we do not forget the heritage that we share with other common law jurisdictions, particularly in relation to our fundamental concepts and basic principles. One of the most formative and durable influences on my judicial career was the time I and other British judges and lawyers spent with American colleagues in Edinburgh, London, and Washington DC, in 1999 and 2000 as part of the Anglo-American Legal Exchange. The historical similarities in our respective laws bind us together and our more recent divergences enable each of us to see how our own laws and practices may yet develop.

And so to the world of commercial contracts. Notwithstanding their common origins, the laws of the United Kingdom have developed differently from those of the United States. Most noticeably, they have diverged in relation to the duty of good faith and the doctrine of unconscionability. American judges have been more interventionist than their British counterparts. In the United Kingdom, the biggest source of regulation and calibration of unequal bargaining power now derives from obligations imposed on the Member States of the European Union. However, even in areas where there are no or few such obligations, the judicial development of our law does not always replicate the approach of American courts. Thus, for example, our approaches to construction, to implied terms, and to remedies differ significantly.
All this makes the comparative methodology that permeates this book particularly useful. Leading scholars from the United States and from the United Kingdom have come together to bring their varied expertise to bear on these important issues. Their approaches are refreshingly diverse. Some contributions resemble ones with which I was familiar as a Professor of Law thirty years ago. Others, particularly the more theoretical ones, are expressed in a language with which I was previously unfamiliar. Taken together, the contributions provide a unique and extremely valuable set of insights into our respective commercial contract laws. The book will help academics and practitioners on both sides of the Atlantic, and in Continental Europe, to appreciate where there is hope for harmonisation or approximation and where there is not. It is a most stimulating collection that should enhance the understanding of all those concerned with the development of the law of commercial contracts, both within and beyond the academic world.

I congratulate the organisers and the contributors to the September 2011 symposium. It is entirely appropriate that it can now reach a wider audience through this original and excellent book, which is a fitting celebration of the achievements of Professor Robert Bradgate, which inspired it.

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