

## INDEX

Abbott, Charles see Tenterden, Charles damages, 102-3, 104 Abbott, 1st Baron Fox's Treatise, 179 Abinger, James Scarlett, 1st Baron, 222 implied assumpsit, 123-4 indebitatus assumpsit, 16, 64-5, Addison, Charles, 178-9, 184-5, 186-7, 199, 223-4, 227, 229-30, 232-3 67, 68, 71, 72-3, 102-4, agency 115 - 16consideration doctrine and, 223-4 'non-assumpsit', 25, 28-9, 174-6 pawnbroking, 255 non-contractual assumpsits, 16–17, undue influence and, 213, 216-17 68, 74, 119, 121, 123, 126, agreement, obligation and, 12, 13-14, 135-6, 138-40 parties-only principle, 62-3, 223 Aikin, John, 149-51 special assumpsit, 16, 67, 68, 102, Alderson, Edward Hall Alderson, 104, 119-20 Baron, 196, 198-9, 247 Aston, Richard, 94-5 Ames, James Barr, 219 Atiyah, Patrick, 6-7 Amos, Sheldon, 271-2 Austin, John, 203, 259-60 annuities for the life of the seller, statutory regulation, 158-60 Bacon, Francis, 155-6 Anson, William, 29-30, 199-200, 201, Baker, J.H., 52-3, 67-8 202, 204, 205, 216-17, 219, Ballantine, William, 128 227-8, 229-30, 231, 277 Ballow, Henry, 37, 39-41, 133-4, 147, Aquinas see Thomas Aquinas 148, 166-7, 182, 276 Aristotle, 35-6 Barton, J.L., 68-9 Ashurst, William Henry, 94-5, 96, Baxton, John, 154 136-7, 139-40, 243 Beawes, Wyndam, 46-7, 82-3 assumpsit Bellot, Hugh, 162 actions, 14, 23-4, 32-3, 50-1, 53, Benbrigge, John, 155–6 56-7, 59, 63-4, 66-7, 70-1, Benjamin, J.B., 211–12 98-9, 112-13, 134, 144-5, Bentham, Jeremy, 174, 258-60, 271 Best, William see Wynford, William 174-6,227assumpsit et fideliter promisit, 15-16 Best, 1st Baron bills of exchange breach of warranty, 95, 96 categories, 16, 67 actions, 278 contractual assumpsits, 17, 59-60, consideration doctrine and, 90-2 68, 125-6development of rules, 44, 49-59, covenants and, 14, 16, 32-3, 181, 223 79-84, 223-4, 271



INDEX 323

Evans's Essays, 125 importance, 79 liability, 50-1, 52, 54, 131-3 Marius's Advice, 48-9 obligation, 50-1 promissory notes and, 44, 57, 59, 61-2, 75, 79-84, 223-4 Blackburn, Colin Blackburn, Baron, 180, 192, 210, 211-12 Blackstone, Sir William, 12, 18–19, 23, 32-4, 39, 42-3, 88-9, 98-9, 108-9, 114, 123, 148-51, 155, 157-8, 177-8, 250 bonds debt on a bond, 14-15, 17-18 invention of, 14-15 post-obit bonds, 163-4 promissory notes, and, 59 as satisfaction, 64-5 as security, 158-9 use of, 145, 162-3 usurious, 144-5 Boswell, James, 127-8 Bracken, Henry, 96-7 Bramwell, George Bramwell, 1st Baron, 209 - 10Braund, William, 82-3 breach of contract actions, 3-4, 15-16, 136 damages, 101-2, 192-3, 197-200, 266 - 7development of rules, 204 breach of covenant damages, 95, 96 breach of warranty actions, 119-20, 208-9 assumpsit, 95, 96 horse sales litigation, 96-106 Brougham and Vaux, Henry Brougham, 1st Baron, 215-16 Brown, Joseph, 274-5 Buller, Sir Francis, 1st Baronet, 28–9, 69, 76, 84-6, 95, 96, 102, 107-8, 118-19, 120, 127-8, 130-1, 134-5, 136, 144, 237, 238-9, 243 Burroughs, Justice, 194 Byles, Sir John Barnard, 188 Bynkershoek, Cornelius van, 84-6, 133

Campbell, Richard Campbell, Lord, 35, 76-7, 141-2, 143-4, 244 Chalmers, Mackenzie, 270-1 Chambers, Robert, 33-4, 123 Chapple, Sir William, 69-70 Chevalier d'Eon, case of, wagering contracts, 233-9 Child, Sir Josiah, 43-4, 46 Chitty, Joseph, 19-20, 123-4, 145-6, 173, 177-8, 179, 181-2, 183, 184-5, 186-7, 191-2, 199, 203, 229-30, 232, 243-4, 276 Chitty, Joseph (the elder), 180 Civil law Common law and, 34-5 influence of, 133, 270-1 knowledge of, 35, 92-3 Natural law and, 84-6, 177, 182 reference to, 93, 122-3, 275-6 Roman law and, 34-5, 122-3, 223 classical model of contract consideration doctrine, 140-6, 186-90, 217-28 development of, 206-12 doctrinal coherence, 180-2 doctrinal innovation, 129-35, 173-7 Equity and, 212-17 introduction, 127-9, 172-3 legal literature, 147-52, 177-80, 202-6, 228-30 limitations, 135-40, 201 offer and acceptance doctrine, 182-6 privity, 217-28 Will Theory, 190-200, 201 Cockburn, Sir Alexander, 12th Baronet, 58-9, 211 codification see Indian contract law; statute law Coke, Sir Edward, 17, 30-1, 34-5 Colebrooke, Henry, 123-4, 148-9, 176-8, 186-7, 191-2, 199, 202, 206-7, 231-2, 264-5, 276 Common law Civil law and, 34-5 Equity and, 1, 3-4, 110-11, 116-17, 133-5, 139-40 mercantile courts and, 44-9 Natural law and, 37



> 324 INDEX Common law (cont.) liability and, 220 reference to, 148-9 obligation and, 111-14, 149 Will Theory and, 271-2 parties-only principle and, 62-3 Comyn, Robert, 156, 177-8, 183, privity and, 217-28 191-2, 199, 232 public policy, 140-4 Comyn, Samuel, 148-9 public policy, and, 245 conditions requirement for benefit or compliance with, 100 detriment, 279-80 conditions precedent, 95, 96, 137-8 survival, 2, 58-9, 186-90 defined as terms, 95 Will Theory and, 186–7, 276 development of rules, 14 'contract', concept of, 12-20 implied conditions, 106, 208-9 contract formation see formation of interpretation, 94-5, 192 contract mutual conditions, 95, 96 contract law development in historical as to soundness, 195-6 context generally, 10-1 use of, 100-1, 183-4, 192-3, 194-6 contract terms consent binding effect of original terms, 120 conditions defined as, 95 absence of, 122, 123-4, 206-7 consideration doctrine and, 188-9 identification of parties, 225 contract formation, 13-14, 203-4 insurance contracts, 88 definition, 38-9 interpretation, 192, 193, 202 development of rules, 213 'latent ambiguity', 225 'free consent', 264-5 rescinding of contract, 120 intention and, 216-17 see also conditions mistake (contract), 213 contractual assumpsits see assumpsit Natural law and, 38-9 contractual mistake see mistake obligation and, 37-8, 147-8 (contract) offer and acceptance doctrine and, contractual obligations see obligation 182 - 3conveyances, covenants and, 95 to penalty clauses, 266-7 Copley, John see Lyndhurst, John Copley, 1st Baron principle of, 35-6 requirement for, 212-13 Cottenham, Charles Pepys, 1st Earl of, undue influence, and, 216-17 184-5, 253-4 consideration doctrine covenants agency and, 223-4 assumpsit and, 14, 16, 32-3, 181, 223 bills of exchange and, 90-2 conveyances and, 95 classical model of contract, 140-6, damages for breach, 95 217 - 28definition, 181 consent and, 188-9 express covenant, 116-17 contract and, 8-9, 17-18, 57-8 Critical Legal Studies movement, 7 contract interpretation and, 90-6 Crooke, George, 79 definition of consideration, 149 Cunningham, Timothy, 48-9, 79 development of rules, 63-4 Equity and, 111-14 Dallas, Sir Robert, 223 expectation and, 90-2 damages flexibility in application, 144 assessment, 101-2, 103-4, 106, 162, intention and, 112, 186-7, 190, 217, 196 - 200218 - 19assumpsit, 102-3, 104



> INDEX 325

award, 64-5, 101, 102, 104-5, 238 - 9breach of contract, 101-2, 192-3, 197-200, 266-7 breach of covenant, 95, 96 claim, 120 classification, 266-7 entitlement and, 103-4 excessive, 104-5 intention and, 192-3 judicial discretion, 104 non-performance, 222-3 overturn, 105 Will Theory and, 190-1, 276 Darnall, Sir John, 48-9 debt on a bond, action of, 14-15, 17 - 18Defoe, Daniel, 42, 45-6 Denison, Justice, 59-60 Denman, Thomas Denman, 1st Baron, 131-3, 188-9, 195-6, 220-2, 248 - 9Dicey, A.V., 229-30 Domat, Jean, 176-7 Earl of Chesterfield v. Janssen, Equity and unfair contracts, 166-70 Eden, Robert, 122 Eldon, John Scott, 1st Earl of, 76-7, 97-8, 107-8, 110-11, 183, 192-3, 214-15 Ellenborough, Edward Law, 1st Earl of, 128, 129-30, 133, 141-4, 149-51, 181-2, 187, 194-5 Emerigon, Balthazard-Marie, 133 Enlightenment, influence of, 275-8 entitlement damages and, 103-4 entitlement based debt, 102-3 Ballow's Treatise, 133-4 classical model of contract, 212 - 17Common law, and, 1, 3-4, 110-11, 116-17, 133-5, 139-40 consideration doctrine and, 111-14 definitional imprecision, 109-10 equitable remedies, 63, 123, 147-8

fraud and, 86-7, 212-17 Kames's Principles, 38-9 Lord Mansfield's association with generally, 107-11 mistake and, 206-12 money had and received, and, 114-20, 121-6 Natural law and, 86-7 public policy and, 212-13 Snell's Principles, 212 Story's Commentaries, 212 unfair contracts, and see unfair contracts, Equity and usage, 110-11 Erskine, Thomas Erskine, 1st Baron, 159 Espinasse, Isaac, 142 Evans, Sir William, 124-5, 126, 149-51, 152, 186-7 expectation consideration doctrine and, 90-2 contract law sanction for, 205 intention and, 37-8 liability and, 205-6 lost, 102 measure, 105-6, 196-7 promise and, 37-8 Field, David Dudley, 269-70, 272-3 Fifoot, Cecil, 9, 111, 113 Filmer, Robert, 156-7 Finch, Heneage see Nottingham, Heneage Finch, 1st Earl of Fonblanque, John, 133-4, 166-7 formation of contract consent, 203-4 developments in describing, 177 intention, 182 offer and acceptance doctrine and,

182 - 6Fortescue, John, 64-5 Fox, William, 123-4, 179, 232-3 fraud Equity and, 86-7, 212-17 see also undue influence 'free consent' see consent French Ambassador see Chevalier d'Eon, case of

326 INDEX

gaming *see* wagering contracts Gibbs, Sir Vicary, 194 Gilbert, Sir Jeffrey, 36–7, 39–40, 40–1, 122–3, 147, 148, 202, 276 Gordley, James, 39 Gould, Justice, 48–9, 57 Grose, Sir Nash, 99, 243 Grotius, Hugo, 35, 84–6, 121–2, 133, 182

Hale, Sir Matthew, 21–2, 39–40, 47, 250 Hancock, William, 256 Hannen, James Hannen, Baron, 211–12 Hardwicke, Philip Yorke, 1st Earl of, 153–4, 157–8, 159–60, 166–70,

212 Hawkins, Henry, 257 Hawles, Sir John, 24-5 Heineccius, Johann Gottlieb, 122 Herle, Justice, 181 Hey, Richard, 234 Hobbes, Thomas, 36-7 Hogarth, William, 160-1, 279 Holdsworth, W.S., 52-3, 111, 113 Holmes, Oliver Wendell, 205 Holroyd, Justice, 187 Holt, Sir John, 25, 34-5, 47-8, 49, 53, 56, 57-9, 60-1, 65-6, 71-2, 72-4, 86-7, 251, 278 Home, Henry see Kames, Henry Home, Lord Horner, Francis, 259 horse sales litigation juries' role, 96-106, 194, 196

juries' role, 96–106, 194, 196 Will Theory and, 193–7 Horwitz, Morton, 6–7, 172–3, 279–80 Huddleson B., 218–19 Humphrey, James, 259–60 Hurst, Willard, 7–8 Hutton, William, 21–2

identification of parties, see parties implied assumpsit see assumpsit implied conditions see conditions indebitatus assumpsit see assumpsit Indian contract law

Act of 1872, 207, 227–8, 266–70, 276 codification in England compared, 270–3

codification initiatives pre-1861 Commission, 260–3 consideration doctrine, 218 public policy, 264 Report of 1866 compilation, 263–6 responses, 266–70 wagering contracts, 227–8 Will Theory, 264–5, 276 insurance contracts development of rules, 82–90 parties-only principle, 62

parties-only principle, 62 terms, 88 wagering contracts and, 239–41

intention consent and, 216–17 consideration doctrine and, 112, 186–7, 190, 217, 218–19 contract formation, 182 contract interpretation, and, 94–5

damages and, 192–3 expectation and, 37–8 identification of parties, and, 209–10 lack of, 25 as to non-parties, 225

parties *see* intention promise and, 203–4, 205 undue influence, and, 214–15, 216–17 usurious transactions, 157–8 Will Theory and, 190–3, 205

interpretation (contract) consideration doctrine and, 90–6, 223–4

development of rules, 8–9, 190–3, 202, 206, 227–8 intention and, 94–5 judicial discretion, 137–8, 208–9, 238 mistake and, 209–10, 224–5 mistake (contract) and, 209–10,

interpretation (statute) broad interpretation, 59–60 judicial discretion, 272 usury, 155

224 - 5

Jacob, Giles, 39–40, 46–7 James, Sir William, 263–4



INDEX 327

Jeffreys, George Jeffreys, 1st Baron, 164 Lee, Sir George, 59, 69-70, 72, 84-7, 88 Jeremy, George, 213, 264-5 legal literature, 29-41, 147-52, 177-80, Jeremy, Henry, 194-5 202-6, 228-30 Johnson, Dr Samuel, 37 legal system and law of contract Jones, Sir William, 32-3, 40-1, 147, conceptualisation of contract, 12-20 149-51, 176-7 continuity and change, 274-5 judicial discretion contract litigation, 20-9 classical model of contract, 173 introduction, 11-12 'contract' concept and, 17 legal complexity, 281-2 damages, 104 legal literature, 29-41 doctrinal innovation, 129-35, 280 Lex Mercatoria (treatise), 44–5 extrajudicial and ex parte liability arising of, 69-70, 112-13, 116-17, conversations, 83-4 historical context summarised, 278-81 144, 226 juries and, 4, 8-10, 196, 197 avoidance, 87-8, 195-6 objectives of, 108 bills of exchange, 50-1, 52, 54, 131-3 consideration doctrine and, 220 public policy and, 243-4, 248-9, denial, 23-4 279 - 80usurious transactions, 170-1 development of rules, 28-9, 66, 121, 'Junius', 107-8 123, 174-6, 196-7, 202 juries discharge from, 189-90 horse sales litigation, 96-106, 194, expectation and, 205-6 196 imposition, 74, 223 judicial discretion and, 4, 8-10, 196, limitation, 190, 200, 265-6 197 parties-only principle and, 227 pawnbrokers, 254-5 mercantile juries, 47-8, 53-4, 156-7 role of, 3-4, 23-9, 173-6, 182-3, 193, potential, 114-15, 162 197-8, 199, 206, 248-9, 274-5 Will Theory and, 38-9, 205-6 Justinian, 121, 148-9, 210-11 Lindley, Nathaniel Lindley, Baron, 216 - 17Linnaeus, Karl, 39-40 Kames, Henry Home, Lord, 38-9, 116-17, 166-7 litigation generally, 20-9 Kant, Immanuel, 151-2 Littledale, Joseph, 220-2 Kent, James, 198-9 Lodge, Thomas, 160-1 Kenyon, Lloyd Kenyon, 1st Baron, Loughborough, Alexander Wedderburn, Lord, 102-3, 214 76-7, 94-5, 100-1, 127-33, 134-9, 140-1, 142 Lyndhurst, John Copley, 1st Baron, 247 King, Peter King, 1st Baron, 59 Macaulay, Thomas, 260-1 'latent ambiguity' in contract terms, Mackeldey, Ferdinand, 203 225 MacMillan, Catherine, 210-11 Law, Edward see Ellenborough, Macnaghten, Sir Francis, 261-2 Macpherson, William, 207, 261-3 Edward Law, 1st Earl of Law and Society movement, 7-8 Macqueen, Hector, 116–17 Lawrence, John, 84-6, 98 Maine, Henry, 123-4, 203, 262-3, 267-9, 272 Le Blanc, Justice, 137-8 Leake, Stephen, 199, 201, 202-3, 205, Malynes, Gerard, 48-9, 55

Mansfield, James, 238

207, 217, 227



> 328 Mansfield, William Murray, 1st Earl of, moral obligation see obligation 9, 25, 75–100, 102–3, 107–20, More, Sir Thomas, 258-9 123-4, 125, 126, 127-8, 129, Morgan, John, 104-5 130, 133, 134, 135, 138-40, Murray, William see Mansfield, 156-8, 186-7, 195-6, 236-42, William Murray, 1st Earl of 245, 265-6, 269, 280 mutual conditions see conditions Marius, John, 45-6, 48-9, 55-6 Markby, William, 220 Nambyar, P.K., 271-2 Martin B., 198-9, 209-10 Natural law Martinus Gosia, 121 Civil law and, 84-6, 121-2, 177, 182 mercantile courts Common law and, 37 Common law and, 44-9 consent and, 38-9 contractual obligations and, 60-74 Equity and, 86-7 growth of, 7-8, 35-6 insurance see insurance contracts introduction, 42-4, 75-7 influence of, 39-41 juries, 47-8, 53-4, 156-7 reference to, 92-3, 98, 147-9, 275-6 Lord Mansfield and, 77-9 rejection of, 36-8, 151-2 negotiable instruments see bills of Will Theory and, 205 exchange, promissory notes negotiable instruments see bills of Meredith, George, 77 exchange, promissory notes Millar, John, 38-9 Neo-Scholastics, 35-6 mistake (contract) Newland, John, 148 consent and, 213 'non-assumpsit' see assumpsit contract interpretation, and, 209-10, non-contractual assumpsits see 224 - 5assumpsit definition of, 25 non-parties development of rules, 206-12, intention as to, 225 228-9, 265, 281-2 North, Francis, Lord Keeper, 164, 165 money had and received, 71-2, 203 North, Roger, 34-5 non-existence of contract, 25 Nottingham, Heneage Finch, 1st Earl of, 39-40, 110-11, 153-4, parties-only principle and, 224–5 Will Theory and, 206, 276 mistake (in law) correction, 25 obligation jury on point of law, 104 agreement and, 12, 13-14, 93 recovery of money paid under, bills of exchange, 50-1 138 - 9consent and, 37-8, 147-8 money had and received consideration doctrine and, 111-14, action of, 66-7, 71-4, 118, 119-20, 149 126, 135-6, 252-3 contracting of, 222-3 equitable basis, 203 discharge from, 218 Equity and, 114–20, 121–6 money had and received, 115-16 limitation, 129, 135-6, 138-9, 265-6, moral obligation, 144-6 280 - 1obligatio naturalis, 116 mistake (contract), 71-2, 203 omission of, 257 mistake (in law), 138-9 promise and, 37-8 obligation, 115-16 quasi-contract, 121-5 unjust enrichment, and, 125 scope of, 60-74

INDEX



> INDEX 329

offer and acceptance doctrine consent and, 182-3 emergence, 8-9 formation of contract, and, 182-6 Will Theory and, 185-6 Oldham, James, 47-8, 97-8, 111, 131 Oliphant, George, 243-4 Ord, Mark, 156 Page, Francis, 69-70, 72 Paley, William, 37-8, 196 Park, James, 77-8, 83-4 Parke B., 190, 194-5, 246, 247 Parker, Thomas, 89 Parsons, Theophilus, 228-9 parties identification in contract terms, 225 intention see intention see also non-parties parties-only principle assumpsit, 62-3, 223 consideration doctrine and, 62-3 emergence, 220-2 liability and, 227 mistake (contract), 224-5 use of, 226 Patteson, Justice, 189-90, 220-2 pawnbrokers, statutory regulation, 251 - 8penalty clauses, consent to, 266-7 Pepys, Charles see Cottenham, Charles Pepys, 1st Earl of Petyt, William, 43-4 Plowden, Francis, 160 Pollock, Sir Frederick, 19-20, 123-4, 125-6, 190, 201, 203-4, 205-6, 209-11, 216-17, 219-20, 227-30, 231-3, 245, 246, 247, 248-9, 264-5, 269-71, 279-80 Pomponius, 121-2 post-obit bonds see bonds Pothier, John Joseph, 124, 133, 148-52, 176-7, 178-9, 184-6, 186-7, 191-2, 203-4, 206-7, 211-12, 214-15, 222-3, 264-5, 276, 278 Powell, John Joseph, 54, 98, 133-4, 147-8, 177-8, 182-3, 191 Pratt, John, 65

Priestley, Joseph, 37-8 privity consideration doctrine and, 217-28 development of rules, 125-6 Probyn, Edmund, 69-70, 72 expectation and, 37-8 intention and, 203-4, 205 obligation and, 37-8 promissory notes Act of 1704, 59–60, 250 action as to, 114-15, 136, 189-90 bills of exchange and, 44, 57, 59, 61-2, 75, 79-84, 223-4 bonds and, 59 enforcement of, 278 Evans's Essays, 125 limitation, 58-9 use of, 56-7 public policy consideration doctrine, 140-4, 245 contract law development and, 230 Equity and, 212-13 Indian contract law, 264 judicial discretion and, 243-4, 248-9, 279-80 marginalisation of, 279-80 wagering contracts see wagering contracts Pufendorf, Samuel, 35, 37, 121-2, 133, 182 quasi-contract obligation and, 121-5 as remedy, 121-2 Raymond, Robert Raymond, 1st Baron, 59-60, 68, 70-1, 72 Rede, Leman, 128 remedies availability, 80, 95, 96, 165 debt on a bond, 14-15 development of rules, 204

equitable, 63, 123, 147-8 money actions, 71-3, 118, 119-20, 126, 135-6 quasi-contract, 121-2 rights and, 33-4, 203



330

Cambridge University Press 978-1-107-04076-2 - The Law of Contract: 1670–1870 Warren Swain Index More information

> remedies (cont.) interpretation see interpretation specific performance, 267-8 (statute) statute law as, 59-60 introduction, 250-1 unjust enrichment, 121 pawnbroking, 251-8 rescinding of contract, terms for, 120 as remedies, 59-60 rights, remedies and, 33-4, 203 Stephen, George, 173-4 Ritso, Frederick, 147 Stephen, James Fitzjames, 269–70 Rochefoucauld, François de La, 42-3 Story, Joseph, 212-13 Rogers, James, 55-6 Sugden, Edward see St Leonards, Roman law, 116-17 Edward Sugden, 1st Baron Civil law and, 34-5, 122-3, 223 Surtees, Robert, 194 influence of, 148-9, 206-7, 217 reference to, 34-5, 60-1, 84-6, 92-3, Taunton, Justice, 222 121-2, 210-11, 275-6 Tenterden, Charles Abbott, 1st Baron, unjust enrichment, 121 128, 129-30, 131-3, 145-6, 187 Romilly, John, 263-4 Thomas Aquinas, 35-6, 121-2 Romilly, Sir Samuel, 214-15, 259, 278 Thompson, E.P., 281-2 Thurlow, Edward Thurlow, 1st Baron, Rooke, Justice, 192–3 Ryan, Sir Edward, 263-4 76, 167, 169 Ryder, Dudley, 95, 96 Tindal, Sir Nicholas, 247-8 treatises see legal literature sailors' wages, 135-44 Treby, Sir George, 71-2 Savigny, Fredrich Karl von, 19-20, Treitel, Guenter, 12 203 - 4Tudor, Owen, 166 Sayer, Joseph, 199 Turner, Sir George, 215 Scarlett, James see Abinger, James Turner, Thomas, 45-6 Scarlett, 1st Baron Scott, John see Eldon, John Scott, 1st Ulpian, 206-7 Earl of undue influence Sedgwick, Henry, 198-9 agency and, 213, 216-17 Sellar, W David, 116-17 consent and, 216-17 Simpson, Brian, 5-6, 39 emergence, 278 Skynner, Lord Chief Baron, 17-18, 93, Indian law reform, 264-5 113 intention and, 214-15, 216-17 Smith, Adam, 37-8 mistake and, 206 Smith, John William, 179-80, 229-30 unfair contracts, Equity and Smollett, Tobias, 11-12, 233 annuities for the life of the seller, Snell, Edmund, 212-13 158 - 60St German's Doctor and Student, Earl of Chesterfield v. Janssen, 166–70 181 - 2early attempts at relief, 160-6 St Leonards, Edward Sugden, 1st introduction, 153-4 usury laws, 154-8, 170-1 Baron, 259-60 statute law unjust enrichment codification in England division of, 14 money had and received, and, 125 India compared, 270-3 overview, 258-60 principle of, 121-2 codification in India, Indian contract as remedy, 121 law Roman law, 121

INDEX



INDEX 331

usurious transactions intention and, 157–8 judicial discretion, 170–1 usury bonds, 144–5 statute interpretation, 155 usury laws reform, 154–8 repeal, 170–1

Vattel, Emer de, 133 Viner, Charles, 13–15 Voet, Johannes, 84–6 Voltaire (François-Marie Arouet), 42–3

wagering contracts
Chevalier d'Eon, case of, 233–9
introduction, 231–3
legal status of, 239
public policy, 245–9
Walpole, Horace, 235
Warnkoenig, L., 203
warranties see breach of warranty
Wedderburn, Alexander see
Loughborough, Alexander
Wedderburn, Lord
Wesket, John, 89, 235
White, Henry, 166
Wightman, Justice, 188–9
Wilde B., 217–18

Will Theory classical model of contract, 190-200, 201 Common law and, 271-2 consideration doctrine and, 186-7, 276 damages and, 190-1, 276 horse sales litigation and, 193-7 Indian contract law, 264-5, 276 intention and, 190-3, 205 liability and, 38-9, 205-6 limitations of, 277 mistake (contract), 206, 276 Natural law and, 205 offer and acceptance doctrine and, 185-6 Willes, Sir John, 49, 94 Williams, John, 192 Wilmot, Sir John Eardley, 27-8, 81, 92-3, 105-6, 265-6 Wilson, Thomas, 154-5 Winstanley, Gerrard, 258-9 Wiseman, Robert, 34-5 Wood, Thomas, 13-14, 31-2, 122-3 Wooddeson, Richard, 33-4, 98, 123, 133-4, 149-51 Wright, Robert Wright, Baron, 229-30 Wynford, William Best, 1st Baron, 131-3, 145-6, 194-5, 246, 247-8

Yorke, Philip *see* Hardwicke, Philip Yorke, 1st Earl of