

Contents

<i>Preface</i>	<i>page xi</i>
<i>Acknowledgments</i>	xiv
Introduction	
<i>Understanding Implied Obligations: Reasoning and Methodology</i>	1
PART I GROUNDINGS FOR A SUPPLEMENTAL APPROACH	
1 Individuals and Relationships	19
1.1 Relationality	21
1.2 Self-Directed Aims	22
1.3 Contextuality	25
1.4 Conclusion	26
2 Authority's Limits	28
2.1 Reasoning from Authority	29
2.2 Rules and Standards: The Limits of Legal Doctrine	31
2.3 The Good Faith Example	32
2.4 The Limits of Legal Concepts	35
2.5 The Limits of Theory	38
2.5.1 Essentialist Theories	38
2.5.2 Relational Theories	39
2.6 Conclusion	40
3 Promises and Obligations	41
3.1 Moral Principle Theories	42
3.2 Social Practice Theories	46
3.3 Conclusion	51

4	Maximization and Cooperation	53
4.1	What Is Maximized?	54
4.2	The Problem of Multiple Equilibria	55
4.3	Bargaining over Risks	59
4.4	The Ex Ante/Ex Post Problem	60
4.5	Conclusion	62
PART II VALUES-BALANCING LEGAL REASONING		
5	The Foundations of Value-Balancing Legal Reasoning	67
5.1	The Existence and Scope of Obligations	69
5.2	Behavior and Reasoning	70
5.3	Reasoning and Normativity	72
5.4	Conclusion	74
6	The Scope of Obligations	75
6.1	Other-Regarding Behavior	75
6.2	Reasoning about Another's Well-Being	77
6.3	Conclusion	83
7	The Source of Obligations	85
7.1	Where Do Obligations Come from?	86
7.2	Duty in Contract	89
7.3	Conclusion	92
8	Relationality Redux	
	<i>Law on the Ground and Law on the Books</i>	94
8.1	Successful and Unsuccessful Relationships	95
8.2	Motivations, Incentives, and Trust	98
8.3	Order without Law	102
8.4	Conclusion	102
PART III APPLICATIONS		
9	Legal Enforceability	
	<i>Formation</i>	107
9.1	The Doctrinal Difficulties	107
	9.1.1 The Domain Problem	107
	9.1.2 The Formation Problem	109
9.2	The Proxy Doctrines	112
9.3	Enforceability: The Values-Balancing Approach	116

<i>Contents</i>		ix
9.4	Intent to Be Legally Bound: Extra-Legal Enforceability	119
9.5	Conclusion	122
10	Performance Obligations	
	<i>Methodological Issues</i>	123
10.1	Intent, Autonomy, and Hypothetical Bargains	124
10.2	Gap Fillers and Default Rules	126
10.3	Conclusion	131
11	Performance Obligations	
	<i>The Values-Balancing Approach</i>	132
11.1	Obligations Implied by Tort Law	132
11.2	Good Faith	136
11.3	Judicial Interpretation	143
11.3.1	The Reading Pipe Example	146
11.3.2	Allocating Risks	148
11.3.3	Avoiding Textual Mistakes	149
11.3.4	Why Contextuality: <i>Columbia Nitrogen Corp.</i>	151
11.4	Conclusion	156
12	Consumer Contracts and Standard Terms	157
12.1	The Dilemma	157
12.2	The Doctrinal Options	159
12.3	The Draft Restatement	160
12.4	The Basis of Exchange	162
12.5	The Other-Regarding Consumer Transaction	164
12.6	Conclusion	166
13	Excused Performance and Risk Allocation	168
13.1	The Problem of Unaddressed Circumstances	170
13.2	Reasoning about Risk Allocation	173
13.2.1	Paradigm	174
13.2.2	The Coronation Cases	176
13.3	Modifications	178
13.3.1	The Doctrine	179
13.3.2	Modifications and Excuses	180
13.4	Conclusion	184
14	Remedies	185
14.1	Promises and Performance	189
14.2	Some Common Remedial Controversies	195

14.2.1	Consequential Damages	195
14.2.2	Restoration Value versus Market Value	197
14.2.3	Seller's Choice of Remedies	200
14.2.4	Lost Volume Sellers	203
14.3	Conclusion	205
	<i>References</i>	207
	<i>Index</i>	216