朗文·培生法学基础系列·影印本
Foundation Studies of Law

契约法

Law of Contract

第五版 5th Edition

[英]保罗·理查兹 Paul Richards 著

英国培生集团是全球教育出版的领军者，朗文是该集团旗下声誉卓著的教育图书品牌。《契约法》是该集团推出的“朗文·培生法学基础系列”之一。

英国契约法从来就不仅仅在英国本土施加影响，而是在世界范围内被广为传播、应用。时至今日，虽然不列颠老大帝国的雄风不在，英国契约法在国际商务活动中的作用却越来越重要。

作者采用的是标准教科书编排体例，案例从可信赖的案例报告中选择，对契约法的主要规则和学说进行了简练、清晰、即时的解说，对由法律产生的问题进行了学术分析，全面覆盖了契约法领域的主要问题。

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导　读

契约法的目的在于推动和鼓励自由和自愿交易，因此契约法的发展与商业息息相关。一个很有意思的现象是布莱克斯通在1756年第一次出版的《英国法律纪事》中，用了380页来写较不重要的不动产法，而只用了28页写契约法。实际上，英国契约法的基本原则都是在最近二百年的"黄金时代"发展起来的。回顾历史，我们就会发现这二百年是"日不落帝国"在全球各地大规模开展国际贸易的时代。所以英国契约法从来就不仅仅在英国本土22.4万平方公里施加影响，而是在世界范围内被广为传播、应用。时至今日，虽然不列颠老大帝国的雄风不在，英国契约法在国际商务活动中的作用却越来越重要，被杨良宜先生称为"国际商务游戏规则"。此次法律出版社引进Paul Richards的《契约法》全面地介绍了这一完善的法律体系。

一、本书的特点和作者介绍

首先，英文引进。此次引进的《契约法》也是国内第一次以影印本的形式介绍英国契约法，英语已经成为国际经贸和法律事实上的"世界语"，通过原汁原味的英文著作来了解英国契约法，不仅能够可以避免一些术语翻译不一致所带来的困惑，更贴近地了解这套规则体系，也在提高契约法修养的同时潜移默化地提高专业英语水平。

其次，反映最新趋势。本书第一版1992年出版，已经做过五次修订，这次引进的是最新的2001年版，是目前国内介绍英国契约法的著作中成书最晚的，反映了最近的发展动态和趋势。比如，面对汹涌澎湃的互联网经济大潮，作者在书中特别讨论了2000年《消费者保护规章》中关于远程联络方面的规定，把视野扩展到通过各种介质远距离订立的契约，包括互联网、电子邮件、电话、传真、信件等。本书还包括了对千呼万唤始出来的重要法案——1999年《契约(第三方权利)法案》和1999年《消费者契约规章》中的不公平条款部分以及一系列案例的最新发展等内容的论述。

第三，教科书体例。本书是英国法学院的通用教材之一，作者采用的是标准教科书编排体例，案例从可信赖的案例报告中选择，对契约法的主要规则和学说进行了简练、清晰、及时的解说，对由法律产生的问题进行了学术分析，全面覆盖了契约法领域的主要问题，而且本书适当的长度使读者不会陷于细节。另外，字体的安排也很有讲究，案例的介绍都采用黑体字，判决书的原文比正文要小一号，读者只读大字部分也不影响对整体内容的把握。还应注意的一点是本书从内容上层次很清楚，但是从书的编排不太容易看得出来各级标题之间的关系，读者可以选择做自己的标记、序号。

第四，容易读懂和理解。由于本书主要面向的对象是英国的LLB(相当于法律本

科)和CPE(相当于法律硕士),因此对于一般的读者来说,书中没有过多的晦涩难懂法律名词,语言也生动、平白,作者不是板起面孔让你一头雾水而是不紧不慢地娓娓道来,可以说是这个知识爆炸时代了解契约法的快捷方式。作者希望使法律以容易读懂和理解的形式呈现在读者面前,并将涉及各个主题一般规则的最主要和最新的案例都作为参考列出。

第五,广泛的文献目录。对于希望进一步研究的读者来说,本书仍然有相当的价值。作者在每章后都给出更进一步的深入阅读的材料,包括其他法律图书,案例和各种法律刊物上的文章。这些目录旨在为读者在更广的范围内,对契约法这一越来越复杂问题产生更完全的理解,节省读者搜寻文献的版本。作者希望本书是学生课堂笔记和大量文献之间的桥梁。

二、本书主要内容

这部分内容希望能够给出本书各章之间的逻辑思路来帮助读者勾勒英国契约法的整个体系,也是对英国契约法理论的一个梳理和回顾过程,并在每一章特别标出了本书最新修改的内容。

第一部分 契约的订立

第1章 现代契约的演进和定义

现代契约法所包括的很多方面只能根据它的历史才能正确理解,因此尽管本书的主要目的是阐述现代契约法的原则,作者仍然比较简要地回顾了一下历史。13、14世纪到18世纪是契约法的早期发展阶段。契约法在19世纪初步形成今天的体系,受个人主义思潮的影响,注重契约自由。但到了近代,保护主义日渐盛行,契约自由趋向衰落,体现在社会保护、消费者保护以及对格式契约的限制上。今天,契约自由的传统原则正在复兴,对个人的保护程度逐渐减弱,让个人有更大的选择自由,为经济带来新的竞争规则。本章第二部分是契约的定义,作者指出契约成立要有客观存在的合意、约因和建立法律关系的意图。

第2章 合意的事实

有约束力契约的形成首先必须有相应的意图,判断此种意图要通过外在客观标准,而非主观的评价。此一客观标准被分解成要约、反要约、承诺、撤回、撤销等术语,从而使有关的分析更可预见,更可行、更客观。作者在本章主要围绕丹宁勋爵的经典分析:要约+承诺=合意,从要约、承诺、承诺终止、条款的确定五个方面展开。值得注意的是作者在谈及要约和要约邀请的区别,承诺的沟通这两个问题时,特别提到了契约法传统理论和《欧盟电子商务指引》对网上购物的影响。

第3章 约因

约因作为有效契约的基本因素,在今天已经不是单独的概念,经过长期的发展、演进,法院已经由此发展出了判断契约是否有强制力的一套规则体系,只有"法律眼中有价值的东西"可以被看作是约因。作者在本章对约因构成围绕三个必须和三个不必来阐述:必须已执行或可执行而不是过去的,必须有承诺人做出而不必向被承诺方,必须

足够而不必充分。允诺禁反言原则也在本章有所论述。

第4章　建立法律关系的意图

仅仅有约因还不能使契约成立，如果契约双方没有建立法律关系的意图，契约也不具有强制力。但如果每项关于契约的争议都要证明这一意图会导致成本太高。因此，法院在商业契约中，假设存在建立法律关系的意图，而在社会及家庭内部的契约中则不然。本章作者主要是从法院对这两类契约的不同处理方式来论述的。

第5章　行为能力

法律对某些自然人和公司形成契约关系的能力有限制，而对于这两者限制方式是不同的。对于自然人来说，作者谈到了法院对醉酒的人、意识混乱的人、未成年人三类人的处理方式。对于公司来说，作者主要是围绕越权原则，如何避免该原则的后果和1989年《公司法案》的相关规定来进行阐述。

第6章　形式

在分析了契约订立的一般要求后，作者将笔触转向了契约的形式。一般来说，契约双方有权决定契约的形式，无论是长篇大论还是口头协议。但是在某些情况下，如契约内容要求确定或契约一方需要保护时，作者谈到三种契约有形式要求。

第二部分 契约的内容

第7章　契约的条款

在分析了契约订立的基本要求后，作者在本章中主要谈及如何判断契约条款的内容。契约条款分为明示和隐含条款，前者指契约中双方明确同意的部分，后者由法院根据立法、贸易惯例等原则进一步引申推出。如果有对违反特定契约条款后果的明示规定，则依约定；如果无明示约定，则可根据隐含条款；如无法根据契约隐含条款推出，则可根据法律的运行来推导；如仍无法推导，则要看无辜一方是否被剥夺了他本来意图获得的东西。在论及如何推导契约条款时，作者特别谈到了最新的1998年《延期支付商业债务法案》和2000年《消费者保护规章》的相关规定。

第8章　免除条款

作者在本章主要讨论限制或排除违约责任的免除条款。契约法的发展过程中，一度认为交易力量是平等因而无需特别保护契约任何一方，到了20世纪则认为需要保护处于弱势一方的消费者的权益。作者主要围绕如何平衡这两种截然相反的判断从三方面展开，即如何使免除条款成为契约条款的一部分，法院如何推断免除条款，其他对免除条款生效的限制。本章最有新意的部分是作者结合1999年《消费者契约规章》的不公平条款部分进行的讨论。

第三部分　使契约无效的因素

第9章　虚伪陈述

虚伪陈述是为劝诱另一方达成契约的虚假事实陈述，本章就是围绕着这一定义展开的。既然虚伪陈述是对事实的陈述，作者首先谈到了其区别于对法律、意见、意图的陈述。其次，由于虚伪陈述必须劝诱另一方达成契约，则其必须是实质性的，被陈述人

必须信赖该陈述。此后作者讨论了三种虚伪陈述:欺骗性的、疏忽的、无罪的虚伪陈述,以及每个类别不同的补救方法。最后一部分简单涉及了虚伪陈述责任的免除。

第 10 章 错误

如果契约一方或双方基于某种误会或误解订立了契约,在什么情况下契约是无效的?这是"错误"包含的基本问题。由于法院干预的原则从来都是没有确定下来,"错误"也是让学习英国契约法的人感到最困难的题目之一。在 19 世纪,由于推崇契约基于双方一致同意的原则,如果没有真正或真实的同意,法院一般会进行干预,认为契约无效。20 世纪以后,法院的态度有了很大的改变,不会直接认定契约无效。然而在某些情况下,契约双方严格遵守协议也是不公正的。面对此种困难,法院一边拒绝适用普通法关于错误的学说,一边发展了应用衡平法的某些补救办法,使此类契约是可撤销的而非一定无效的。很自然地,作者分别介绍了普通法上的错误和衡平法上的错误。

第 11 章 强制、不正当影响和交易力量的不平等

只有契约双方自愿受到契约条款约束,契约才具有法律约束力,一方不受由于威胁或不正当的压力订立契约的约束。长期以来,普通法上的强制学说的适用范围较狭窄,法院通过发展衡平法上的不正当影响进行了补充。仅仅因为交易力量的不平等不足以使契约无效。作者在本章论述了普通法的强制,衡平法的不正当影响和交易力量的不平等。本章需要注意的是一系列案例对不正当影响原则的新发展。

第 12 章 违法

法院不会强制执行非法契约,这一原则看起来很简单,但是问题在于违法包括了多种多样的罪过,谋杀和小偷小摸都是违法的。所以契约违法的严重程度是不同的,那么不同的违法契约是否应当有同样的效果?作者在本章分成四个问题来探讨违法契约:契约履行的非法方式,法律规定的违法行为,普通法上的违法行为,契约发现违法的后果。

第四部分 契约的解除

第 13 章 因履行和违约的解除

本章分为两部分:履行和违约。

契约履行的基本原则是契约严格地按照契约条款履行。就像第 7 章提到的,无法做到这一点将使无辜一方有权声明契约没有被履行,有权要求赔偿损失,并在一定情况下可以单方面解除契约。正因为契约的履行必须是正确和严格的,如果一方未能完全履行他的义务,就不能取得任何损害赔偿。严格履行规则的适用有时太过苛刻,作者介绍了法院发展出的一些缓和这一严格规则的规则。此外,作者谈到了普通法和衡平法对履行期限的不同看法。

凡一个人无法履行其契约义务,他将违反契约。违反契约将肯定会带来赔偿损失的要求,无论违约的性质有多严重或轻微。无辜一方是否有权解除契约,取决于违约是否足够严重,以至于影响到契约的基础,违反了基本义务,或另一方在履行契约前拒

绝。作者按照违反了基本义务，另一方在履行契约前拒绝，违约的后果展开论述。

第 14 章　合意解除

一般的原则是因为契约是因合意产生就可因合意而消灭。但在契约双方同意消灭契约的情况下，一方可能食言，又不同意消灭契约了，并因另一方违反契约而提起诉讼。所以契约双方以第二个由约因支持的契约的形式来形成合意是更明智的。虽然本章讨论的是解除契约，这些原则以新契约替代旧契约或改变契约条款的情况。

第 15 章　由于失效的解除

如果契约订立后发生了超出一方控制的不可预见的事件，导致一方违约而是否要求其承担责任？在这种情况下，要求一个人必须绝对履行他所承担的义务（即 13 章中提到的严格履行原则）是完全不公平的，所以产生了失效的学说。失效是指契约订立后出现无法履行的情况，不同于第 10 章错误中谈到的自始不能。失效的后果是导致契约立即、自动终止。由于这一原则对契约的影响是如此剧烈，法院只在有限的范围内适用它。作者在本章从原则的发展、适用、可能产生影响的因素、法律后果进行论述。

第五部分　违反契约的补救方法

第 16 章　普通法对损害的补救方法

以上各章分析契约法的各种原则、原理、规则都是用来强制执行契约的。事实上，强制执行的概念有些不准确，因为在普通法下的补救方法只有损害赔偿金或违约赔偿。受损害的一方必须证明受到的损失和违约之间存在因果关系，而且损失与违约的结果不是非常间接的关系。本章分为三部分：评估给予何种损害赔偿的根据，对违约损害赔偿的限制即如果考察因果和间接关系，损失如何计算。

第 17 章　衡平法上的补救方法和行为的限制

作为普通法补救方法的补充，衡平法补救方法分为特定履行和禁止令后者。特定履行是法院指令被告按照契约条款履行契约义务的命令，对应积极的义务。禁止令对应消极的义务，用来限制违法否定性契约和契约中的否定性条款。行为的限制部分主要围绕 1980 年限制法案展开。

第 18 章　准契约

准契约是通过法律强行规定付款义务而不需由契约双方订立的契约。本章分为三部分来论述。

第六部分　契约第三方的权利和义务

第 19 章　契约相对性原则

作为英国法律的一项基本原则，契约相对性原则是指契约的权利和义务只能由契约双方享有和负担。该原则的一般后果是契约中受益的第三方不能就契约提起诉讼。尽管这一原则仍然有效，但是相当多的例外已经逐渐把这一原则蚕食了，所以作者接下来论述的是该原则的例外情况。最后也是重要的是该原则的变革，作者围绕英国历史上用时最久的议会立法——1999 年《契约（第三方权利）法案》对契约相对性原则的

深远影响展开论述。

第 20 章 代理

尽管根据上一章提到的契约相对性原则,一个人不能与另一人订立契约来授予或强加责任给第三方,但是一个人可以代表另一人(即委托人)从而在第三方和委托人之间建立契约关系。代理原则是契约相对性原则的例外。本章从代理关系的建立,代理的后果,代理的终止,欧盟法对代理关系的影响来论述。

第 21 章 契约权利的让与

让与是指契约的一方将他根据契约获得的利益转让给第三方,该第三方能够自己强制契约的履行。这种情况也是契约相对性原则的例外。本章包括普通法的自动让与,衡平法的自动让与,立法让与,其他影响各种让与的因素。

三、研究英国契约法的其他图书

笔者在为本书做导论的过程中,浏览过一些国内已有的相关图书。为了方便读者的研究,特列举如下:

- A·G·盖斯特:《英国合同法与案例》,中国大百科全书出版社 1998 年
- P·S·阿狄亚:《合同法导论》,法律出版社 2002 年
- 杨桢:《英美契约法论》(修订版),北京大学出版社 2000 年
- 何宝玉:《英国合同法》,中国政法大学出版社 1999 年
- 杨良宜:《国际商务游戏规则》,中国政法大学出版社 1998 年

五本书中《英国合同法与案例》与本书的体例编排最相近,包括引用法案、案例的内容都基本一致,历经 26 次修订,是堪称经典的教科书,对本书中涉及的基本理论问题都作了论述,由于已经被译成中文,在阅读本书中遇到困难时,可以参考。但该书引进的版本是 1984 年版,时间较早,恐无法反映英国契约法的最新发展。《合同法导论》也是介绍英国契约法的一部力作,并且大量采用历史分析的方法介绍了契约法在近几百年中的发展,对影响契约的理论、政策和思想进行了深入论述,可以说不仅指明了规则是什么,而且也关注规则为什么是这样,理论性更强一些。《英美契约法论》的特点是对同处于普通法系的美国法也有所比较、研究,在编排的体例和术语的翻译上注重普通法系和大陆法系的沟通,使受大陆法系教育的读者更容易接近,附录中给出了英美一般通用契约样本。几部书中,《英国合同法》的篇幅最大,洋洋洒洒,近 800 页,75 万多字,因此对各个问题都有所涉及和深入,而且附有英国与契约法相关的主要制定法的中译本。《国际商务游戏规则》是香港海商法专家杨良宜的作品,主要偏重契约在海商法方面的应用,实务性更强,语言也更平白和生动一些,要注意的是该书对一些术语的翻译与国内不同,不过基本上术语的翻译后都附有英文,应该不会对阅读造成太大的障碍。

赵伊江

2003 年 2 月 28 日

PREFACE

Since the last edition was published, the law has continued to develop unabated. Much of this has arisen from the surge in contracts entered into by e-commerce via the Internet. Whilst the fortunes of dot.com companies seem to ebb and flow, it is clear that the development of e-commerce contracts is still in its infancy and is likely to increase dramatically in the future. In order to control this new commercial environment, there have been discussions taking place over several years within the European Union to legislate for this development. A number of directives have been introduced but the most important of these for a text on the law of contract are the European Directives on Electronic Commerce and Direct Selling. The Directives have had an impact, not just in relation to e-commerce contracts, but also in relation to some of the more conventional means of contract formation. To this end, I have included in this edition a discussion of the effects of the Consumer Protection (Contracts Concluded by Means of Distance Communication) Regulations 2000. As the title suggests, this piece of legislation encompasses not just contracts formed via the Internet but all types of contracts formed at a distance, for instance by telephone, e-mail, fax, letter, etc. The vast majority of the existing law on contract formation was formulated during the nineteenth century and, until now, these rules have been adapted to the new electronic era by way of precedent. However, there is only so far one can go with this process and at times this has not been very successful. The new regulations go some way towards rectifying this situation and as such are of fundamental importance to the law of contract.

Over the past two editions, I have discussed the impending Contract (Rights of Third Parties) Bill. This, finally, has now received the Royal Assent to create the Contract (Rights of Third Parties) Act 1999, which has now been fully encompassed within this edition. This Act must have had one of the longest gestation periods of any Act of Parliament when one considers that the Law Revision Committee first recommended the need to reform the rules relating to privity of contract in 1937!

In the last edition I included the Unfair Terms in Consumer Contract Regulations 1994. These have now been replaced by the Unfair Terms in Consumer Contract Regulations 1999. The changes are slight but in the last edition, I levelled criticisms at the 1994 Regulations which the new 1999 Regulations address.

I have amended the text in relation to illegality in contracts. To this extent, I have re-written the section on contracts in restraint of trade to take into the account the changes wrought by the Competition Act 1998. This Act was required in order to bring the United Kingdom into line with Articles 81 and 82 of the Treaty of Rome. I thank my colleague Mr Tim Wolstencroft for his expert help and advice here. I have also amended the text in relation to contracts to oust the jurisdiction of the courts to take into account the effects of the Arbitration Act 1996. I should have made this amendment in the last edition but it escaped my attention. I trust that I have rectified this situation now.

I did not include a commentary on the decision in *Westdeutsche Landesbank Girozentrale* v *Islington London Borough Council* in the last edition. This case affirmed the principle that money paid under a mistake of law was irrecoverable. This view was challenged and indeed overturned in *Kleinwort Benson* v *Lincoln City Council* in 1998. The full implications of this decision had not been fully assessed and anyway it came too late to be included in the last edition. I have now provided a full commentary on these cases and have provided commentary on the first case to arise out of the *Kleinwort* decision – *Nurdin and Peacock plc* v *D B Ramsden and Co. Ltd.*

In the last two editions, I attempted to deal with almost an explosion of decisions in relation to undue influence arising out of the case of *Barclays Bank* v *O'Brien*. In the last edition in particular I included a substantial amount of comment on the case of the *Royal Bank of Scotland* v *Etridge*. While this aspect of undue influence is still a burgeoning one, I have resolved in this edition to be a little cautious when including new cases. I have therefore confined the inclusion of additional cases to those that make a significant contribution to this area of the law. My reason for this is that this area is now very complex and cluttering the text of a Law of Contract book with fine principles on an area that is really within the realms of equity is more likely to confuse rather than clarify the law. This contravenes the whole philosophy behind the writing of this textbook and I hope that readers will understand and appreciate this piece of editorial licence I am bringing to this edition. I have therefore confined any revision here to the case of *Barclays Bank* v *Coleman* which questioned what was formerly regarded as the fundamental requirement of manifest disadvantage in undue influence.

In the last edition, I included a section on the rule in *Dunlop* v *Lambert* as an exception to the rule of privity of contract. I have re-written and revised this area by deepening and broadening the analysis. Furthermore, in the last edition, I discussed the Court of Appeal decision of *Alfred McAlpine* v *Panatown* in this context. This case went to the House of Lords late last year and so I have provided an updated commentary on that judgement.

A further case that has been considered in this edition is that of *Rogers* v *Stevenson* in which the meaning of 'in the course of a business' in the context of the Sale of Goods Act 1979 has been reassessed. This expression was previously given a restrictive interpretation in that the sale had to be an integral part of the seller's business to fall within this meaning. In *Rogers* v *Stevenson*, the Court of Appeal revised its interpretation in order to give the expression a wider meaning so that it will now encompass all goods sold in a business and not just those which are an integral part of the business.

Whilst there have been a large number of reports of cases in the law of contract published over the last two years, the vast majority of these cases are classed as unreported judgements and do not appear in the mainstream series of law reports. I have refrained from making widespread use of such cases since the whole ethos of this book (and the others in the series) are that they should stand alone and that if a student needs to look further they should be able to do so from a readily available source.

The motives behind the writing of this book have evolved from some of the developments that have occurred in legal education in recent years. 'Modularisation' and 'semesterisation' of degree courses has invariably meant that students have less

contact time with their individual subject tutors, since the thrust has been towards student-centred learning programmes. The growth of the use of the Internet for tuition purposes is likely to isolate students even more from their subject tutors. For the first year student who is new to Law, Higher Education and such methods of learning, the prospect of making sense of scribbled lecture notes obtained in a crowded lecture theatre (or scrolling through a 'virtual' lecture), the task in hand must seem enormous. Their predicament is not helped by the fact that poor funding is resulting in many so-called full-time students having to work part-time simply to survive. I make no secret of the fact that they have my utmost sympathy and that I am grateful that I studied for my law degree when I did.

Today's student, despite all of these problems, must nevertheless acquire a good knowledge of this fundamental aspect of English law. Many have to acquire this knowledge through their own efforts. Of course, this has been the experience of distance-learning students for many years and, indeed, by anyone faced with a new subject who is required to obtain a good knowledge and understanding of it in the absence of some of the more formal educational structures, such as the part-time student. The onset of virtual degree courses is likely to increase these problems.

This book has also been written with the Postgraduate Diploma in Law/Common Professional Examination student in mind. These students are required to study the eight core legal subjects over one academic year in which they receive thirty-nine hours of tuition per subject. It is expected that such students will acquire a postgraduate level of knowledge of the law in this time! Clearly, all these students require a text that provides them with a head start in their understanding of the material. Whilst these have been the primary motives behind the writing of this book, students who are studying the law of contract as a single subject may also find the book useful, such as students studying this subject for Part II of the Institute of Legal Executive examinations or even A-level examinations.

The object of this book, therefore, remains the same; that is, to present the law in a readable and accessible form by setting out the general principles of the subject with reference to the leading and most recent cases. Problem areas and other contentious aspects are also considered but as a means of leading the student into more specific reading. For this reason, there is a selection of recommended further reading at the end of each chapter which takes the form of more authoritative texts and articles in a variety of legal journals. Hopefully, these will also save students time when having to research particular topics. I have attempted to present the text in a user-friendly and structured form, eliminating footnotes and minor cases that so often are an intimidating presence and which tend to obscure rather than clarify the principles behind the subject.

Not many years ago, the law of contract was regarded as one of the easier undergraduate law courses. I do not believe this to be true any more (if, indeed, it ever was). The reception and comments received with respect to the last edition were extremely encouraging although, as ever, I welcome any suggestions that may improve it. In time-honoured tradition, all errors and omissions are entirely my responsibility.

Whilst this book can be used as a stand-alone text, it is not written with this intention but to encourage students to undertake further reading so that they have a full understanding of the wider issues that surround this increasingly complex subject.

Neither has the book been written with the intention of providing a 'crammer' – the text is far too full in any event to meet such an aim – but to provide a half-way house between a student's lecture notes and the more substantive texts.

My sentiments towards authors of the more traditionally regarded authoritative works, both past and present, remain the same. No-one could write any work on the law of contract without reference to such works as Treitel, *Law of Contract*; Cheshire, Fifoot and Furmston, *Law of Contract* and Beatson, *Anson's Law of Contract*. The contribution of these authors to the subject have been immense and it is only correct that acknowledgement should be given to this fact as well as to the help each one has given to me over many years, in particular with the writing of this book. It is for this reason that readers have been referred to these texts at the end of each chapter and, where appropriate, within the body of the text itself.

It is a tradition in the preface of a book to thank those who have given their help and assistance in the writing and production of it. Mine is no exception and I make no apology for this. On the academic side, I express my thanks to David Sagar and Tim Wolstencroft, both of the Department of Law of the University of Huddersfield, for their continued suggestions and constructive criticism of the text – both solicited and unsolicited! Tim in particular has continued to give tremendous support to myself and my family over some very difficult personal times and for this I cannot thank him enough. My thanks also go to Pat Bond of Financial Times Publishing for his continued support and patience in waiting for the manuscript for this fifth edition. His belief in this book and in the Foundation Studies in Law Series as a whole has contributed immensely to the success of both. The quality of the production of the book and the series is a tribute to the dedicated hard work of Pat and his team at Pearson Education.

On a personal level, my continued thanks and gratitude must go to my mother and father for their continued support, help and dedication over many years. The death of my mother as I was writing this edition was a tremendous loss to me and to this extent this edition is dedicated to her. Both my parents have taken great interest in my work and have obtained great vicarious pleasure in the success of this book. They have shown great understanding and patience at my sometimes prolonged absences whilst working on this manuscript.

This book is also dedicated to three very special people in my life – my wife, Val, and my two sons, Phillip and William. Their love, affection and companionship are of paramount importance to me. Firstly, Val has given me great encouragement and patient support for my work, whether it be on this fifth edition or otherwise. Her love and companionship have provided me with the greatest incentive as we have wound our way through the trials and tribulations that sometimes arise in life. Her courage and ability to laugh in the face of great adversity and personal difficulties has been a great lesson to us all. Secondly, my two sons, Phillip and William, continue to offer me plenty of distractions from work. As with all children, their continued ability to think up new ways of relieving me of hard-earned royalties continues to bemuse and surprise me. In the preface to the fourth edition, I resolved that they could pay for their own golf balls – now their patience extends to helping father look for his! They also continue to show great fortitude when I berate them about their school or college work. I treasure their companionship tremendously and revel in their successes, as

well as in their enthusiasm and zest for life. They are ambitious and I sincerely hope, like any parent, that those aspirations are realised.

Paul Richards
April 2001

TABLE OF CASES