



21 世纪法学系列教材

总主编 曾宪义




# 合 同 法

The Law of Contract  
(Fourth Edition)

(导读本)

[英] Hugh Collins 著

丁广宇 孙良国 编注

 中国人民大学出版社

21 世纪法学系列教材

总主编 曾宪义

# 合同法

The Law of Contract  
(Fourth Edition)  
(导读本)

[英] Hugh Collins 著  
丁广宇 孙良国 编注

中国人民大学出版社

## 图书在版编目 (CIP) 数据

合同法 (导读本) / [英] Hugh Collins 著; 丁广宇, 孙良国编注.

北京: 中国人民大学出版社, 2006

(21 世纪法学系列教材/曾宪义总主编)

ISBN 7-300-07687-4

I. 合…

II. ①C… ②丁… ③孙…

III. 合同法-法的理论

IV. D912.290.1

中国版本图书馆 CIP 数据核字 (2006) 第 120645 号

21 世纪法学系列教材

总主编 曾宪义

**合同法**

The Law of Contract (Fourth Edition)

(导读本)

[英] Hugh Collins 著

丁广宇 孙良国 编注

---

**出版发行** 中国人民大学出版社

**社 址** 北京中关村大街 31 号

**邮政编码** 100080

**电 话** 010-62511242 (总编室)

010-62511398 (质管部)

010-82501766 (邮购部)

010-62514148 (门市部)

010-62515195 (发行公司)

010-62515275 (盗版举报)

**网 址** <http://www.crup.com.cn>

<http://www.ttrnet.com> (人大教研网)

**经 销** 新华书店

**印 刷** 北京宏伟双华印刷有限公司

**规 格** 170 mm×228 mm 16 开本 **版 次** 2006 年 10 月第 1 版

**印 张** 35.25

**印 次** 2006 年 10 月第 1 次印刷

**字 数** 640 000

**定 价** 48.00 元

---

**版权所有 侵权必究 印装差错 负责调换**

## 21 世纪法学系列教材 编审委员会

总 主 编 曾宪义

副总主编 韩大元 (常务) 叶秋华  
朱景文 刘 志

编 委 (以姓氏笔画为序)

|     |     |     |     |
|-----|-----|-----|-----|
| 王作富 | 叶秋华 | 龙翼飞 | 孙言文 |
| 孙国华 | 许崇德 | 朱力宇 | 朱景文 |
| 刘 志 | 吴宏伟 | 陈卫东 | 张曙光 |
| 周 珂 | 郑 定 | 胡锦涛 | 赵中孚 |
| 赵秀文 | 郭 禾 | 高铭喧 | 韩大元 |
| 韩玉胜 | 曾宪义 |     |     |

# “21 世纪法学系列教材”总序

曾宪义

斗转星移，人类社会纷纭复杂、充满变数的 20 世纪即将落幕，21 世纪的黎明已经来临。在这世纪更替、千年变迁之际，回顾人类社会不平凡也不平坦的发展历程，我们为人类文明的辉煌成就而感到欣喜，也因社会进步的步履艰难而感到沉重。自从摆脱动物生活、开始用双手去进行创造性的劳动、用人类特有的灵性去思考以后，我们人类在不断改造客观世界、创造了辉煌的物质文明的同时，也在不断地探索人类的主观世界，逐渐形成了哲学思想、伦理道德、宗教信仰、风俗习惯等一系列维系道德人心、维持一定社会秩序的精神规范，更创造了博大精深、义理精微的法律制度。应该说，在人类所创造的诸种精神文化成果中，法律制度是一种极为奇特的社会现象。因为作为一项人类的精神成果，法律制度往往集中而突出地反映了人类在认识自身、调节社会、谋求发展的各个重要进程中的思想和行动。法律制度是现实社会的调整器，是通过国家的强制力来确认人的不同社会地位的有力杠杆，它来源于现实生活，而且真实地反映现实的要求。因而透过一个国家、一个民族、一个时代的法律制度，我们可以清楚地观察到当时人们关于人、社会、人与人的关系、社会组织以及有关哲学、宗教等诸多方面的思想与观点。同时，法律制度是一种具有国家强制力、约束力的社会规范。它以一种最明确的方式，对当时社会成员的言论或行动作出规范与要求，因而法律制度也清楚地反映了人类在各个历史发展阶段中对于不同的人所作出的种种具体要求和限制。因此，从法律制度的发展变迁中，同样可以看到人类自身不断发展、不断完善的历史轨迹。人类社会几千年的国家文明发展历史已经无可争辩地证明，法律制度乃是维系社会、调整各种社会关系、保持社会稳定的重要的工具。同时，法律制度的不断完善，也是人类社会文明进步的明显体现。

由于发展路径的不同、文化背景的差异，东方社会与西方世界对于法律的意义、底蕴的理解、阐释存有很大的差异。但是，在各自的发展过程中，都曾比较注重法律的制定与完善。中国古代虽然被看成是“礼治”的社会、“人治”的世

果。但从《法经》到《唐律疏议》、《大清律例》等数十部优秀成文法典的存在，充分说明了成文制定法在中国古代社会中的突出地位，惟这些成文法制所体现出的精神旨趣与现代法律文明有较大不同而已。时至本世纪初叶，随着西风东渐、东西文化交流加快，中国社会开始由古代的、传统的社会体制向近现代文明过渡，建立健全的、符合现代理性精神的法律文明体系方成为现代社会的共识。正因为如此，近代以来的数百年间，在西方、东方各主要国家里，伴随着社会变革的潮起潮落，法律改革运动也一直呈方兴未艾之势。

从历史上看，法律的文明、进步，取决于诸多的社会因素。东西方法律发展的历史均充分证明，法律是一门实践的科学。推动法律文明进步的动力，是现实的社会生活，是政治、经济和社会文化的变迁。同时，法律也是一门专业性极强的科学，法律内容、法律技术的发展，往往依赖于一大批法律专家以及更多的受过法律教育的社会成员的研究和推动。从这个角度看，法学教育、法学研究的发展，对于法律文明的发展进步，也有着异常重要的意义。正因为如此，法学教育和法学研究在现代国家的国民教育体系和科学研究体系中，开始占有越来越重要的位置。

中国近代意义上的法学教育和法学研究，肇始于一个世纪以前的清代末年。清光绪二十一年（公元1895年）开办的天津大学堂，首次开设法科并招收学生，虽然规模较小，但仍可以视为中国最早的近代法学教育机构。三年后，中国近代著名的思想家、有“维新骄子”之称的梁启超先生即在湖南《湘报》上发表题为《论中国宜讲求法律之学》的文章，用他惯有的富有感染力的激情文字，呼唤国人重视法学，发明法学，讲求法学。梁先生是清代末年一位开风气之先的思想巨子，在他的辉煌的学术生涯中，法学并非其专攻，但他仍以敏锐的眼光，预见到了新世纪中国法学研究和法学教育的发展。数年以后，清廷在内外压力之下，被迫宣布实施“新政”、推动变法修律。以修订法律大臣沈家本为代表的一批有识之士，在近十年的变法修律过程中，在大量翻译西方法学著作、引进西方法律观念，有限度地改造中国传统的法律体制的同时，也开始推动中国早期的法学教育和法学研究。本世纪初，中国最早设立的三所大学——北洋大学、京师大学堂、山西大学堂均设有法科或法律学科目，以期“端正方向，培养通才”。1906年，应修订法律大臣沈家本、伍廷芳等人的奏请，清政府在京师正式设立中国第一所专门的法政教育机构——京师法律学堂。次年，另一所法政学堂——直属清政府学部的京师法政学堂也正式招生。这些大学法科及法律、法政学堂的设立，应该是中国历史上近代意义上的正规专门法学教育的滥觞。

自清末以来，中国的法学教育作为法律事业的一个重要组成部分，也随着中



国社会的曲折发展，经历了极不平坦的发展历程。在 20 世纪的大部分时间里，中国社会一直充斥着各种矛盾和斗争。在外敌入侵、民族危亡的沉重压力之下，中国人民为寻找适合中国国情的发展道路而花费了无穷心力，付出过沉重的代价。从客观上看，长期的社会骚动和频繁的政治变迁曾给中国的法制建设、法律进步事业带来过极大的消极影响，中国的法学教育与法学研究几乎遭受了灭顶之灾。直至 70 年代末期，以“文化大革命”宣告结束为标志，中国社会从政治阵痛中清醒过来，开始用理性的目光重新审视中国的过去，规划国家和社会的未来，中国由此进入长期稳定、发展的大好时期。以这种大的社会环境为背景，中国的法学教育在 20 世纪的最后 20 年中获得了前所未有的发展机遇。

从宏观上看，经过 20 年的努力，中国的法学教育事业所取得的成就是辉煌的。首先，经过“解放思想，实事求是”思想解放运动的洗礼，在中国法学界迅速清除了极左思想及苏联法学模式的影响，根据本国国情建设社会主义法治国家已经成为国家民族的共识，这为中国法学研究和法学教育的发展奠定了稳固的思想基础。其次，随着法学禁区的不断被打破、法学研究的逐步深入，一个初步完善的法学学科体系已经建立起来。理论法学、部门法学各学科基本形成了比较系统和成熟的理论体系和学术框架，一些随着法学研究逐渐深入而出现的法学子学科、法学边缘学科也渐次成型。1997 年，国家教育主管部门对原有专业目录进行了又一次大幅度调整，决定自 1999 年起法学类本科只设一个单一的法学专业，按照一个专业招生，从而使法学学科的布局更加科学和合理。同时，在经过充分论证的基础上，确定了法学专业本科教学的 14 门核心课程，加上其他必修、选修课程的配合，由此形成了一个传统与更新并重、能够基本适应国家和社会发展需要的教学体系。再次，法学教育的规模迅速扩大，层次日趋齐全，结构日臻合理。据初步统计，目前中国有 330 余所普通高等院校设置了法律院系或法律专业，在校学生已达 6 万余人。除本科生外，在一些重点大学、全国知名的法律院系，法学专业硕士研究生、博士研究生已经成为培养的重点。

众所周知，法律的进步、法制的完善，是一项综合性的社会工程。一方面，现实社会关系的发展、国家政治、经济和社会生活的变化，为法律的进步、变迁提供动力，提供社会的土壤。另一方面，法学教育、法学研究的发展，直接推动法律进步的进程。同时，全民法律意识、法律素质的提高，则是实现法治国理想的关键的、决定性的因素。在社会发展、法学教育、法学研究等几个攸关法律进步的重要环节中，法学教育无疑处于核心的、基础的地位。中国法学教育过去 20 年所走过的历程令人激动，所取得的成就也足资我们自豪。随着国家的发展、社会的进步，在 21 世纪，我们将面临更严峻的挑战和更灿烂的前景。“建设世界

一流法学教育”，任重道远。

首先，法律是建立在经济基础之上的上层建筑，以法律制度为研究对象的法学也就成为一个实践性很强的学科。社会生活的发展变化，势必要对法学教育、法学研究不断提出新的要求。经过 20 年的奋斗，中国改革开放的第一阶段目标已顺利实现。但随着改革开放的逐步深入，国家和社会的一些深层次问题，比如说社会主义市场经济秩序的真正建立、国有企业制度的改革、政治体制的完善、全民道德价值的重建、环境保护和自然资源的合理利用等等，也已经开始浮现出来。这些复杂问题的解决，无疑最终都会归结到法律制度的完善上来。建立一套完善、合理的法律制度，当然是一项庞大的社会工程，需要全民族的智慧和努力。其中的基础性工作，如理论的论证、框架的设计、具体规范的拟订、法律实施中的纠偏等等，则有赖于法学研究的不断深入，以及高素质社会人才、特别是法律人才的养成，而培养法律人才的任务，则是法学教育的直接责任。

其次，21 世纪将是一个多元化的世纪。在 20 世纪中叶发生的信息技术革命，正在极大地改变着我们的世界。现代科学技术，特别是计算机网络信息技术的发展，使传统的生活方式、思想观念发生了根本的改变，并由此引发许多人类从未面对过的问题。就法学教育而言，在 21 世纪所将要面临的，不仅是教学内容、研究对象的多元化问题，而且还有培养对象、培养目标的多元化、教学方式的多元化等一系列问题，这些问题，都需要法学界去思考、去探索。

中国人民大学法学院建立于 1950 年，是新中国诞生后创办的第一所正规高等法学教育机构。在半个世纪的岁月中，中国人民大学法学院以其雄厚的学术力量、严谨求实的学风、高水平的教学质量以及丰硕的学术研究成果，在全国法学教育领域处于领先地位，并已开始跻身于世界著名法学院之林。据初步统计，人大法学院已经为国家培养法学专业本科生、硕士生、博士生一万余人，培养各类成人法科学生 30 余万人。经过多年的努力，人大法学院形成了较为明显的学术优势，在现职教师中，既有一批资深望重、在国内外享有盛誉的法学前辈，更有一大批在改革开放后成长起来的优秀学术中坚。这些老中青法学专家多年来在勤奋研究法学理论的同时，也积极投身于国家的立法、司法实践，对国家法制建设贡献良多。

有鉴于此，中国人民大学法学院与中国人民大学出版社经过研究协商，决定结合人大法学院的学术优势和人大出版社的出版力量，出版这套“21 世纪法学系列教材”。本套教材包括按照国家教育部所确定的法学专业核心课程和颁布印发的《全国高等学校法学专业核心课程基本要求》而编写的 14 门核心课程教材，也包括法学各领域、各新兴学科教材及数部案例分析在内，共 50 本。我们设想，



本套教材的编写，将更加注意“高水准”与“适用性”的合理结合。首先，本套教材将以人大法学院具有全国影响的各学科的学术带头人领衔，约请全国高校优秀学者参加，形成学术实力强大的编写阵容。同时，在编写教材时，将注意吸收改革开放以来中国法学研究的最新的学术成果，注意国际学术发展的最新动向，力争使教材内容能够站在 21 世纪初的学术前沿，反映各学科成熟的理论，反映 20 世纪后期中国法学的水平。其次，本套教材主要供法学专业本科教学使用。因此，在编写教材时，我们将针对本科教学和新时期本科学生特点，将学术性、新颖性、可读性有机结合起来，注意运用比较生动的案例、简明流畅的语言去阐释法律理论与制度。

我们期望并且相信，经过组织者、编写者、出版者的共同努力，这 50 本法学教材将以其质量效应、规模效应，成为奉献给新世纪的精品教材，并以此作为庆祝中国人民大学法学院建院 50 周年的一份贺礼。

1999 年 9 月

# Preface

Perhaps no other subject in the standard canon of legal education can claim such an august tradition, such rigour of analysis, and such sublime irrelevance, as the law of contract. The multitude of textbooks typically repeat an interpretation of the subject which has remained unaltered for a century or more in its categorization and organization of the legal materials. The latent values which inform these works include a priority attached to personal liberty, minimal regulation of market transactions, and a profound divide between private economic transactions and public control over the social order. This fidelity to nineteenth-century *laissez-faire* ideals, which is unmatched in other fields of legal studies, often remains concealed behind a presentation of the law which emphasizes the formal, technical, and historical qualities of legal reasoning.

The result of this fidelity to tradition is that students learn in their early years a misleading and almost entirely irrelevant set of rules. It is doubly misleading, for the values which support the law have altered, and the emphasis upon the formal qualities of legal reasoning tends to exclude any appreciation of how the law rests upon policy choices at all. The attempt to repeat the past guarantees the irrelevance of the subject, since it can only have rare practical applications, because most contractual relations will be governed by different rules from those stated in the books. My interpretation of the law of contract distances itself from these standard accounts of the subject in two ways.

The book defines the field of study by reference to the context of market transactions, rather than the traditional confines of the legal conceptual category of contracts. It delineates the subject as those rules which regulate trading practices and shape the permitted forms of market transactions. As well as compelling discussion of relevant parts of other aspects of private law, such as tort and unjust enrichment, this frame of reference also requires the introduction of statutory and regulatory materials. In particular, it requires an examination of how membership of the European Community and its single market is beginning to shape the rules which provide the basis for market transactions throughout Europe. By emphasizing the social context of market transactions, and identifying those rules and legal principles which have an important bearing on this context, the relevance of the subject to legal practice and social action becomes more assured. There remains a problem of generality, for most contracts are subject to particular regimes of law. But what a general introduction to the subject must achieve is an understanding of the criteria by which market transactions are differentiated from each other.

The second contrast with traditional accounts of the subject derives from the focus on these criteria of differentiation between contracts, which prompts a fundamental revision of the description of the values which underlie the modern law of contract. My interpretation of the legal materials emphasizes the way the law both establishes market transactions as an important site for citizens to acquire a sense of meaning for their lives, and controls the market for the sake of establishing and protecting public goods. I have referred to these goals compendiously as a conception of the 'social market'.

This fourth edition differs from the previous one principally in its inclusion of new statutory and case law material, together with European Community initiatives that increasingly set the regulatory framework for consumer contracts. Important new legislative material includes the Human Rights Act 1998, the Contracts (Rights of Third Parties) Act 1999, the Unfair Terms in Consumer Contracts Regulations 1999, the Consumer Protection (Distance Selling) Regulations 2000, the Electronic Communications Act 2000, the Sale and Supply of Goods to Consumers Regulations 2002 and the Enterprise Act 2002.

The primary focus of the book remains upon English law. But to understand the current regulation of market transactions in England, some aspects of European and international law have to be considered. I have also introduced frequent comparisons with jurisdictions from elsewhere in the common law world, either where these countries have addressed problems yet to be considered in England, or where their reasoning points to the future direction which English law is likely to take.

To avoid any misunderstanding of my purpose in writing this book, let me make a few concluding observations about its objectives. It is primarily a study of legal rules and doctrines, not an attempt to discover the way some aspect of society works through a study of the law. An examination of legal doctrine is interesting and important in its own right, for the law frequently supplies the location for conclusive settlement of debates about social justice, and so lawyer's interpretations of social phenomena and the values built into their analyses constitute a vital focus of study for anyone interested in how a society is constituted and how it may be reformed. This work offers an interpretation of the law which tries to make the best moral sense of these materials, to fit them into a coherent picture of the social policies which the law pursues in its regulation of market transactions. It is no part of my purpose to bring out contradictions and incoherence in the legal doctrine, though in formulating a sustained interpretation no doubt I brush over local difficulties of internal coherence in the law.

Lawyers trained in the traditional canon of contract law may find some of the concepts and categories of my interpretation unfamiliar, and they may be concerned that because the courts do not use exactly the same terminology, then my interpretation of the law must be misleading. But given that my interpretation suggests that the traditional account conceals more than it reveals about legal regulation of market transactions, some novelty in the terminology becomes essential. It serves the purpose of better expressing the principles which guide the legal reasoning.

A restatement of the law of contract has considerable potential importance, because students throughout the common law world learn from the subject many of their elementary legal skills. The way the subject is taught, described, and examined shapes most students' perception of how legal reasoning works, and what objectives the law normally tries to achieve. As long as students continue to receive the implicit message from traditional texts that legal reasoning comprises the formal application of rules gleaned from ancient precedents which embrace nineteenth-century *laissez-faire* values, their legal education commences on the wrong foot and never really recovers. Students should learn instead that contemporary moral and political values decisively shape each branch of the law, that legislation provides the key element in the legal regulation of social life, and that disputes about the law reveal conflicting interpretations of social values and how they should be realized.

### **Acknowledgements**

One's debts in writing a work of this kind multiply over the years as it goes through successive editions, so one cannot hope to mention everyone who has assisted me by contributions and criticism. Special mention, however, should be made of Roberto Unger, who first inspired the project, and thanks go to Nick McBride and Colin Scott for their comments on the second edition, to Anna Edwards for her assistance on the third edition, and to Ed Brown for his help on this fourth edition.

Hugh Collins

March 2003

London School of Economics and Political Science

# Table of statutes

|  | PAGE                                 |
|--|--------------------------------------|
| Agricultural Holdings Act 1948 .....                 | 252                                  |
| Arbitration Act 1996 .....                           | 100, 394                             |
| s 9 .....  | 393                                  |
| 32, 33, 67, 68, 91 .....                             | 394                                  |
| Bills of Exchange Act 1882 .....                     | 50                                   |
| Bills of Sale Act (1878) Amendment Act<br>1882 ..... | 382                                  |
| Carriage by Air Act 1961                             |                                      |
| Sch 1 .....  | 268                                  |
| Carriage of Goods by Sea Act 1992 ....               | 50                                   |
| Children Act 1989                                    |                                      |
| s 2(9) .....   | 53                                   |
| Common Law Procedure Act 1852 ..                     | 388                                  |
| ss 210-212 .....                                     | 388                                  |
| Companies Act 1985                                   |                                      |
| Pt XII (ss 395-424) .....                            | 382                                  |
| s 35 .....   | 116                                  |
| 35A .....  | 116, 129                             |
| Companies Act 1989 .....                             | 116, 129, 382                        |
| Consumer Arbitration Agreements<br>Act 1988 .....    | 394                                  |
| Consumer Credit Act 1974 .....                       | 286, 289,<br>292, 295, 388, 390, 393 |
| s 43-47 .....  | 203                                  |
| 60-64 .....  | 202                                  |
| 65 .....   | 51, 202                              |
| 67, 68 .....   | 149                                  |
| 87-89 .....  | 388                                  |
| 90 .....   | 390                                  |
| 99-103 .....   | 376                                  |
| 105-112 .....  | 393                                  |
| 114-121 .....  | 381                                  |
| 127 .....  | 51, 202                              |
| (1) .....  | 45                                   |
| (3) .....  | 44                                   |
| 129 .....  | 295, 388                             |

|   | PAGE                |
|---|---------------------|
| Consumer Credit Act 1974 - <i>contd</i>               |                     |
| s 132 .....   | 391                 |
| 136 .....   | 390                 |
| 137 .....   | 286, 376, 391       |
| 138 .....   | 286, 376            |
| (1) .....   | 286                 |
| 139 .....   | 376                 |
| (2) .....   | 286                 |
| 140 .....   | 376                 |
| 192(3) .....  | 367, 383            |
| Consumer Protection Act 1987 ..                       | 8, 185,<br>190, 191 |
| Pt I (ss 1-9) .....                                   | 321                 |
| s 20 .....  | 184, 185            |
| 21 .....  | 207                 |
| 39 .....  | 190, 192            |
| Contracts (Applicable Law) Act 1990 .                 | 41                  |
| Contracts (Rights of Third Parties)<br>Act 1999 ..... | 325                 |
| s 1(1)-(3) .....                                      | 325                 |
| 2(1), (3) .....                                       | 326                 |
| 3, 5 .....  | 326                 |
| 6(5) .....  | 326                 |
| 7(1) .....  | 327                 |
| Courts and Legal Services Act 1990                    |                     |
| s 58 .....  | 54                  |
| Criminal Law Act 1967                                 |                     |
| s 5(1) .....  | 53                  |
| Defective Premises Act 1972 .....                     | 206                 |
| Electronic Communications Act 2000                    |                     |
| s 7 .....   | 51                  |
| 8(1) .....  | 51                  |
| Employment Rights Act 1996 .....                      | 423                 |
| s 1 .....   | 203                 |
| Pt X (ss 111-132) .....                               | 423                 |
| s 43F .....   | 53                  |

|   | PAGE     |
|---|----------|
| Employment Rights Act 1996 – <i>contd</i>                 |          |
| s 94 .....  | 249      |
| 113 .....   | 430      |
| 203 .....   | 252      |
| Employment Tribunals Act 1996                             |          |
| s 18 .....  | 401      |
| Enterprise Act 2002                                       |          |
| s 8 .....   | 8        |
| 212 .....   | 198      |
| Equal Pay Act 1970  |          |
| s 1 .....   | 252      |
| Fair Trading Act 1973                                     |          |
| s 124 .....   | 268      |
| Financial Services and Markets Act 2000                   |          |
| s 157, 158 .....  | 292      |
| 397 .....   | 207      |
| Gaming Act 1845   |          |
| s 18 .....  | 51       |
| Hire Purchase Act 1964                                    |          |
| s 27 .....  | 367, 383 |
| Honours (Prevention of Abuses)                            |          |
| Act 1925 .....  | 53       |
| Housing Grants, Construction and<br>Regeneration Act 1996 |          |
| Pt II (ss 104–117) .....                                  | 393      |
| Human Fertilisation and Embryology<br>Act 1990            |          |
| s 30 .....  | 112      |
| Human Organ Transplants                                   |          |
| Act 1989 .....  | 105      |
| s 1 .....   | 51       |
| Human Rights Act 1998 .....                               | 44, 45   |
| Insolvency Act 1985 .....                                 | 382      |
| Insolvency Act 1986 .....                                 | 397      |
| ss 238, 423 .....   | 60       |
| Land Registration Act 1925 .....                          | 382      |
| Landlord and Tenant (Covenants)                           |          |
| Act 1995 .....  | 309      |
| Law of Property Act 1925                                  |          |
| s 49(2) .....   | 390      |
| 146 .....   | 388      |
| Law of Property (Miscellaneous<br>Provisions) Act 1989    |          |
| s 1 .....   | 55       |
| 2 .....   | 226      |
| (1) .....   | 49       |
| (3), (5) .....  | 50       |

|   | PAGE                    |
|---|-------------------------|
| Law Reform (Contributory Negligence)<br>Act 1945        |                         |
| s 1(1) .....  | 419                     |
| Law Reform (Frustrated Contracts)<br>Act 1943           |                         |
| s 1 .....   | 407                     |
| Law Reform (Miscellaneous Provisions)<br>Act 1970 ..... | 53                      |
| Matrimonial Causes Act 1973                             |                         |
| s 34 .....  | 105                     |
| Merchant Shipping Act 1995                              |                         |
| s 183 .....   | 268                     |
| Minors' Contracts Act 1987 .....                        | 116                     |
| Misrepresentation Act 1967 .....                        | 194                     |
| s 2(1) .....  | 190, 193, 194, 195, 196 |
| (2) .....   | 193                     |
| 3 .....   | 205                     |
| Property Misdescriptions Act 1991 ..                    | 183                     |
| s 2 .....   | 190                     |
| Public Interest Disclosure Act 1998                     |                         |
| s 1 .....   | 53                      |
| Restriction of Offensive Weapons<br>Act 1959            |                         |
| s 1 .....   | 51                      |
| Road Traffic Act 1988                                   |                         |
| s 148(7) .....  | 324                     |
| Sale of Goods Act 1893 .....                            | 124, 359                |
| Sale of Goods Act 1979 .....                            | 124, 359, 361           |
| s 3 .....   | 116                     |
| 7 .....   | 299                     |
| 8 .....   | 65, 241                 |
| 13 .....  | 258                     |
| 14 .....  | 206, 254, 255, 258, 420 |
| (2) .....   | 17, 242                 |
| (2A) .....  | 242, 276                |
| (2B), (2D) .....  | 242                     |
| 15 .....  | 258                     |
| 15A(1) .....  | 361                     |
| 19 .....  | 383                     |
| 28 .....  | 369                     |
| 39 .....  | 381                     |
| 48(2) .....   | 371                     |
| 48A .....   | 17                      |
| 48B .....   | 17, 431                 |
| 48C .....   | 17                      |
| 48D .....   | 17, 362                 |

|   | PAGE     |  | PAGE               |
|---|----------|--|--------------------|
| Sale of Goods Act 1979 – <i>contd</i>   |          | Trade Descriptions Act 1968 – <i>contd</i> |                    |
| s 49(1), (2) .....                      | 369      | s 14 .....                                 | 190                |
| 53(2) .....                             | 412      | 24 .....                                   | 190, 191           |
| Sale of Offices Act 1551 .....          | 53       | Trade Union and Labour Relations           |                    |
| Sale of Offices Act 1809 .....          | 53       | (Consolidation) Act 1992                   |                    |
| Statute of Frauds (1677) .....          | 49       | s 236 .....                                | 432                |
| s 4 .....                               | 50       | Uniform Law on International Sales         |                    |
| Sunday Trading Act 1994 .....           | 14       | Act 1967                                   |                    |
| Supply of Goods and Services Act 1982   |          | Sch 2, para 7 .....                        | 162                |
| s 13 .....                              | 241, 333 | Unfair Contract Terms Act 1977 .....       | 256,               |
| 15 .....                                | 65, 241  | 257, 260, 265, 268, 287, 370, 372          |                    |
| Surrogacy Arrangements Act 1985 ...     | 112      | s 2(1) .....                               | 254                |
| Third Parties (Rights Against Insurers) |          | (2) .....                                  | 257, 258           |
| Act 1930 .....                          | 324      | 3 .....                                    | 258                |
| Torts (Interference with Goods)         |          | (2) .....                                  | 339                |
| Act 1977                                |          | (b) .....                                  | 287                |
| s 3 .....                               | 397      | 4 .....                                    | 393                |
| 12 .....                                | 371, 381 | 6 .....                                    | 206, 254, 258, 259 |
| Trade Descriptions Act 1968 .....       | 8, 188,  | 11 .....                                   | 261                |
| 190                                     |          | (1), (4) .....                             | 258                |
| s 1 .....                               | 188, 255 | 12(1) .....                                | 254                |
| 2 .....                                 | 188      | 13 .....                                   | 257                |
| 3 .....                                 | 207      | (1)(b) .....                               | 372                |
|   |          | 29(2) .....                                | 269                |
|   |          | Sch 2 .....                                | 259, 260           |



# Table of statutory instruments

|  | PAGE   |
|--|--------|
| Business Advertisements (Disclosure) Order 1977, SI 1977/1918 .....  | 208    |
| Conditional Fee Agreements Order 1995, SI 1995/1674 .....  | 54     |
| Conditional Fee Agreements Regulations 1995, SI 1995/1675 .....  | 54     |
| Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 .....  | 202    |
| Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 .....   | 341    |
| Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, SI 1987/2117 ..... | 149    |
| Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order 1988, SI 1988/2078 .....            | 185    |
| Consumer Protection (Distance Selling) Regulations 2000, SI 2000/2334 .....  | 208    |
| regs 7, 10–12 .....  | 121    |
| Control of Misleading Advertisements Regulations 1988, SI 1988/915 .....   | 8, 197 |
| Electronic Commerce (EC) Regulations 2002, SI 2002/2013 .....  | 170    |
| reg 15 .....   | 8      |
| General Product Safety Regulations 1994, SI 1994/3238 .....  | 207    |
| reg 8 .....  | 340    |
| Package Travel, Package Holidays and Package Tour Regulations 1992, SI 1992/3288 .....                                     |        |
| regs 12, 14 .....  |        |

|   | PAGE   |
|---|--|
| Price Marking Order 1991, SI 1991/1382 .....                                | 201  |
| Property Misdescriptions (Specified Matters) Order 1992, SI 1992/2834 ..... | 183  |
| Sale and Supply of Goods to Consumers Regulations 2002, SI 2002/3045 .....  | 242, 431   |
| reg 5 .....   | 17, 362  |
| Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083 .....     | 237, 255, 258, 288, 292, 370, 373, 376, 378, 394 |
| reg 5(1) .....  | 271, 289   |
| 6(1) .....  | 290  |
| (2) .....   | 288, 289   |
| 7 .....   | 233  |
| (1) .....   | 201, 230   |
| (2) .....   | 202, 230   |
| 10 .....  | 265, 288   |
| 11 .....  | 288, 292   |
| 12–15 .....   | 288  |
| Sch 1 .....   | 292  |
| Sch 2 .....   | 257, 290, 291                                    |
| para 1(b) .....   | 370, 373   |
| (d), (e) .....  | 388  |
| (i) .....   | 237  |
| (j), (k) .....  | 340  |
| 1(n) .....  | 129  |
| (o) .....   | 369  |
| (q) .....   | 394  |
| Sch 3 .....   | 376  |
| para 1(e) .....   | 376  |
| 2(b) .....  | 341  |

# Table of cases

|  | PAGE     |
|--|----------|
| A  |          |
| AMEV-UDC Finance Ltd v Austin (1986) 162 CLR 170, 68 ALR 185, 60 ALJR 741, HC of A .....   | 378      |
| Adams v Lindsell (1818) 1 B & Ald 681, 106 ER 250 .....  | 169      |
| Addis v Gramophone Co Ltd [1909] AC 488, 78 LJKB 1122, [1908-10] All ER Rep 1, 101 LT 466, HL .....  | 109, 414 |
| Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd and Securicor (Scotland) Ltd [1983] 1 All ER 101, [1983] 1 WLR 964, [1983] 1 Lloyd's Rep 183n, 127 Sol Jo 508, [1983] LS Gaz R 2156, 1982 SLT 377, HL .....  | 373      |
| Alaska v First National Bank of Ketchikan 629 P 2d 78 (1981) .....   | 321      |
| Alaskan Trader, The. See Clea Shipping Corp'n v Bulk Oil International Ltd, The Alaskan Trader   |          |
| Albacruz (Cargo Owners) v Albazero (Owners), The Albazero [1977] AC 774, [1976] 3 All ER 129, [1976] 3 WLR 419, [1976] 2 Lloyd's Rep 467, 120 Sol Jo 570, 126 NLJ 953, HL .....  | 311      |
| Alexander v Home Office [1988] 2 All ER 118, [1988] 1 WLR 968, [1988] ICR 685, [1988] IRLR 190, 132 Sol Jo 1147, CA .....  | 424      |
| Allcard v Skinner (1887) 36 Ch D 145, 56 LJ Ch 1052, 36 WR 251, [1886-90] All ER Rep 90, 57 LT 61, 3 TLR 751, CA .....   | 153      |
| Allied Marine Transport Ltd v Vale do Rio Doce Navegacao SA, The Leonidas D [1983] 3 All ER 737, [1984] 1 WLR 1, [1983] 2 Lloyd's Rep 411, 127 Sol Jo 729; revsd [1985] 2 All ER 796, [1985] 1 WLR 925, [1985] 2 Lloyd's Rep 18, 129 Sol Jo 431, [1985] LS Gaz R 2160, CA .....      | 348      |
| Aluminum Co of America v Essex Group Inc 499 F Supp 53 (WD Pa 1980) ...  | 362      |
| Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd [1976] 2 All ER 552, [1976] 1 WLR 676, 119 Sol Jo 318; affd [1976] 2 All ER 552, [1976] 1 WLR 676, [1976] 1 Lloyd's Rep 443, 120 Sol Jo 95, CA .....  | 383, 384 |
| Amalgamated Investment and Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd [1982] QB 84, [1981] 1 All ER 923, [1981] 2 WLR 554, 125 Sol Jo 133; affd [1982] QB 84, [1981] 3 All ER 577, [1981] 3 WLR 565, [1982] 1 Lloyd's Rep 27, 125 Sol Jo 623, CA ..... | 226      |
| Amalgamated Society of Railway Servants v Osborne [1910] AC 87, 79 LJ Ch 87, 54 Sol Jo 215, 101 LT 787, 26 TLR 177, HL .....   | 47       |
| Anglia Television Ltd v Reed [1972] 1 QB 60, [1971] 3 All ER 690, [1971] 3 WLR 528, 115 Sol Jo 723, CA .....   | 407      |