SUMMARY OF CONTENTS

PREFACE III

TABLE OF CASES XXXIII

TABLE OF UNIFORM COMMERCIAL CODE CITATIONS XLIX

TABLE OF CITATIONS TO THE RESTATEMENT OF CONTRACTS LI

TABLE OF CITATIONS TO THE RESTATEMENTS OF RESTITUTION LVII

TABLE OF UNIFORM CONSUMER CREDIT CODE CITATIONS LIX

Introduction **1**

PART 1. WHAT PROMISES SHOULD THE LAW ENFORCE?—THE DOCTRINE OF CONSIDERATION

Chapter 1. Simple Donative Promises, Form, Reliance, and Past Benefit Conferred **9**
Section 1. Simple Donative Promises 9
Section 2. The Element of Form 17
Section 3. The Element of Reliance 28
Section 4. Promises Based on a Past Benefit Conferred ("Past Consideration") 54

Chapter 2. The Bargain Principle and Its Limits **71**
Section 1. The Bargain Principle 71
Section 2. Unconscionability 83
Section 3. The Problem of Mutuality 112
Section 4. Performance of a Legal Duty; Modifications 137
Section 5. Waiver of a Contractual Duty 180

Chapter 3. The Limits of Contract **189**

PART 2. REMEDIES FOR BREACH OF CONTRACT

Chapter 4. An Introduction to Contract Damages **211**

Chapter 5. The Expectation Measure **245**
Section 1. Damages for Breach of a Contract for Services 245
Section 2. Damages for Breach of a Contract for the Sale of Goods 274
Section 3. Mitigation; Contracts for Employment 297
Section 4. Foreseeability 313
Section 5. Certainty 327
Section 6. Damages For Mental Distress 339
Section 7. Liquidated Damages 349

Chapter 6. Specific Performance **367**

Chapter 7. The Reliance and Restitution Measures **383**
Section 1. Reliance Damages in a Bargain Context 383
Section 2. The Restitution Measure 391

PART 3. ASSENT

Chapter 8. An Introduction to Interpretation **417**
Section 1. Subjective and Objective Elements in Contract Interpretation .. 417
Section 2. Problems of Interpreting Purposive Language 444

Chapter 9. The Mechanics of a Bargain (I)—Offer and Revocation **457**
Section 1. What Constitutes an Offer 457
Section 2. Termination of the Offeree's Power of Acceptance: Lapse, Rejection, and Counter–Offer 470
Section 3. Termination of the Offeree's Power of Acceptance: Revocation ... 486

Chapter 10. The Mechanics of a Bargain (II)—Transacting at a Distance **513**

Chapter 11. The Mechanics of a Bargain (III)—Modes of Acceptance **519**
Section 1. Acceptance by Act 520
Section 2. Subjective Acceptance 530
Section 3. Acceptance by Conduct 534
Section 4. The Effect of using a subcontractor's bid 538
Section 5. The Effect of Failing to Notify an Offeree That His Acceptance is Too Late 539
Section 6. Silence as Acceptance 542
Section 7. Acceptance by Electronic Agent 555

Chapter 12. Implied Contract and Related Non-Contractual Claims **559**
Section 1. Implied in Fact Contracts and Related Restitution Claims 560
Section 2. The Protection of At-Will Employees 574

Chapter 13. Indefiniteness, Preliminary Negotiations, and the Duty to Bargain in Good Faith **593**

Chapter 14. The Parol Evidence Rule: Textualism v. Contextualism **651**
Section 1. The Parol Evidence Rule 651
Section 2. The Interpretation of Written Contracts: Textualism v. Contextualism 684
Section 3. The Role of Usage, Course of Dealing, and Course of Performance in Interpretation 711

Section 4. Oral Modification of a Written Contract With a No-Oral-Modification Clause 733

PART 4. FORM CONTRACTS IN COMMERCIAL AND CONSUMER CONTEXTS

Chapter 15. Contract Formation in a Form–Contract Setting 753
Section 1. Battle of the Forms: The Basic Issues 753
Section 2. "Shrinkwrap" and "Clickwrap" Agreements 779

Chapter 16. Interpretation and Unconscionability in a Form–Contract Setting 805

PART 5. MISTAKE AND UNEXPECTED CIRCUMSTANCES

Chapter 17. Mistake 837
Section 1. Mechanical Errors ("Unilateral Mistakes") 837
Section 2. Mistakes in Transcription; Reformation 853
Section 3. Mutual Mistakes (Shared Mistaken Assumptions) 858
Section 4. Nondisclosure 879

Chapter 18. The Effect of Unexpected Circumstances 897

PART 6. PROBLEMS INVOLVING PERSONS OTHER THAN THE CONTRACT

Chapter 19. Third–Party Beneficiaries 941

Chapter 20. Assignment and Delegation 989

PART 7. PROBLEMS OF PERFORMANCE

Chapter 21. The Obligation to Perform in Good Faith 1013

Chapter 22. The Doctrine of Substantial Performance 1037
Section 1. The General Principle 1037
Section 2. Contracts for the Sale of Goods 1047

Chapter 23. Express Conditions 1061
Section 1. Introduction 1061
Section 2. The Distinctions Between the Operation of a Promise and the Operation of a Condition 1062
Section 3. Problems of Interpretation in Distinguishing Between Conditions and Promises 1070
Section 4. Prevention; The Implication of a Duty to Fulfill a Condition 1075
Section 5. Conditions of Satisfaction 1081
Section 6. Excuse 1090

Chapter 24. The Powers to Withhold Performance and to Terminate a Contract in Response to Breach **1103**

Chapter 25. Repudiation and Insecurity **1121**
Section 1. Repudiation 1121
Section 2. Insecurity and the Right to Demand Assurances 1136

Appendix A. The Statute of Frauds **1153**
Section 1. Introduction 1154
Section 2. The Text of the Original Statute 1155
Section 3. The Purpose of the Statute 1156
Section 4. How it was Decided What Kinds of Contracts Should be Required to be in Writing 1158
Section 5. American Variations on the English Theme 1160
Section 6. Judicial Interpretations of the Various Subsections of the Statute of Frauds—Introduction 1161
Section 7. Contracts for the Sale of an Interest in Land (Section 4(4)) 1162
Section 8. Contracts for the Sale of Goods 1163
Section 9. Some Other Formal Requirements in the Uniform Commercial Code 1168
Section 10. Agreements Not to be Performed Within One Year From the Making Thereof (Section 4(5)) 1169
Section 11. The Suretyship Section (Section 4(2))—Generally 1173
Section 12. The Suretyship Section Continued—"The Main Purpose Rule" 1174
Section 13. The Suretyship Section Continued—Miscellaneous Problems 1176
Section 14. Promises Made by Executors and Administrators (Section 4(1)) 1177
Section 15. Contracts Upon Consideration of Marriage (Section 4(3)) 1178
Section 16. What Kind of Writing Will Satisfy the Statute 1179
Section 17. Electronic Contracting and the Statute of Frauds 1185
Section 18. The Effect of Part Performance of, or Reliance Upon, an Oral Contract Within the Statute—Introduction 1187
Section 19. The Restitution of Benefits Conferred Under the Oral Agreement 1188
Section 20. Reimbursement for Reliance on the Oral Contract 1189
Section 21. The Right to the "Value of The Bargain" Where There Has Been Part Performance of, or Reliance Upon, the Oral Contract 1192
Section 22. The Effect of Non–Compliance—Legal Consequences of the Unenforceable Agreement 1196
Section 23. Oral Rescission 1199
Section 24. Oral Modifications 1199
Section 25. The Interaction of the Statute of Frauds With the Parol Evidence Rule 1202
Section 26. The Interaction of the Statute of Frauds With the Remedy of Reformation 1203

Section 27. Pleading and Procedural Problems in Connection With the Statute 1204
Section 28. A Glance Backward and Ahead 1204

INDEX 1207