

## CONTRACT RULES

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## Decoding English Contract Law

Neil ANDREWS



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## Contract Rules. Decoding English Contract Law

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*For Liz, Sam, Hannah, and Ruby*

## PREFACE

Law which can only be tentatively identified after a trawl through extensive authorities must be condemned as not fit for purpose.

A succinct statement of the English contract law rules is needed for three reasons: it will make this important body of law easier to discover and communicate; it will render the subject more susceptible to rational discussion; and it will make it more likely that the law will be accurately, consistently and reliably applied by legal advisors, parties to negotiation and participants in contentious proceedings.

The aim has been to offer Rules which are neither too detailed – otherwise this will reintroduce the present vice of excessive complication – nor too thin – for generalities are more likely to mislead than provide secure guidance.

The Rules (including the five General Principles) are supported by Comment and by Further Reading.

It is hoped that this work will be of use to a wide audience: lawyers, judges, businessmen, public officials, jurists, scholars, students and ordinary people, both in England and Wales and elsewhere, and both within and outside the Common Law family of jurisdictions.

The project has arisen following the author's numerous attempts during the last decade to try to present English contract law to civil law audiences in Europe, South America and Asia. This was no easy task. English contract law is mostly founded on precedents, that is, the judicial decisions of leading courts. But many of these judgments are long and complicated. Gathering this information is a 'mission impossible' for non-lawyers (including those regularly engaged as experts or arbitrators). Even experienced lawyers will often find it laborious and demanding to pin-point the law on a particular topic. The result is that (even before the challenge of applying the law to the facts of a difficult case) the law of contract is expensive to find and hard to summarise.

Specific contracts cannot be treated in a general statement of contract law (and so there can be no comprehensive examination of sale, hire, insurance, etc). As for legal subjects at the periphery of contract law, difficult decisions have been made: not to include insolvency (except as a species of set-off, Article 197); and not to include equitable obligations and rights arising from trusts (with the exception of constructive trusts, Article 7(i) and trusts of promises, Article 88).

There is important overlap with tort law (Articles 7, 71, 75, 86, 118 and 139), land law (Articles 32 and 33), trusts law (Article 88), and evidence and procedure (Articles 4, 89, 90, 97, 99, 109, 110, 197 and 198), including arbitration (Article 99) and mediation (Article 99).

March, 2016

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