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Contracts -- Conclusion -- 4. Consideration and the Variation of Contracts: A Different Solution -- 5. Consideration and the Joint Promisee -- The Arguments for the Joint Promisee Principle -- Two Fallacies -- Joint Promisee as Promisor -- Unilateral Contracts -- Conclusion -- Addendum -- 6. The Function of Exception Clauses -- The Current Approach -- Are Exception Clauses Substantive or Procedural In Their Effect? -- Can the Parties to a Contract Create Rights Intended by Them to be Unenforceable? -- A Different Approach Suggested -- A Suggested Classification of Exception Clauses -- The Interpretation of Exception Clauses In Relation to Their Function -- Some Special Consequences of the Exception Form -- Conclusions -- Addendum -- 7. The Second Rise and Fall of Fundamental Breach -- Discharge for Breach and Deviation Distinguished -- The Function of Exception Clauses -- The Suisse Atlantique Case -- The Second Version of Fundamental Breach -- The Securicor Case -- The Significance of Securicor for the Future -- Conclusion -- 8. Contract Damages, Ruxley, and the Performance Interest -- The Ruxley case -- A Basic Ambiguity in Contract Damages -- Damages as Protection of the Performance Interest -- Other Protections of the Performance Interest -- Extending the Potential Inclusiveness of Performance Protection -- The Compensation Principle -- Reinstatement and Repair: Building Contracts -- Difference in Value in Building Cases -- Three Questions -- The Place of General Damages -- Summary and Conclusions -- Addendum: Two Recent Cases -- 9. The Performance Interest, Panatown, and the Problem of Loss -- The Arguments -- The Problem of Characterisation -- The Narrow Ground -- The Albazero Exception -- The Broad Ground -- Who Suffered the Loss? -- The Position Where Both Have Suffered Loss -- Conclusion -- 10. Contract not Trust: Some Questions About the Contracts (Rights of Third Parties) Act from Another Perspective -- Contract or Not? -- A New Form of Contract? -- The Availability of Equitable Remedies -- Failure of Consideration -- Defences Available to the Promisee -- Conclusion -- 11. Assumption of Responsibility and Pure Economic Loss in New Zealand -- Assumption of Legal Liability in Tort -- Assumption of Non-Tort Obligation -- Assumption of a Task -- Conclusion

Sommario/riassunto

It has many times been said that contracts involve assumptions of obligation or liability, but what that means, and what it is that is assumed, have not often been discussed. It is to further such discussion that some of the author's previously published writings around this subject have been brought together in this book. His basic premises are that contractual obligation and liability in this context are two sides to the same coin and that an assumption of one is an assumption of both. Parties are bound not because liability has been imposed upon them by law as a result of their having entered into a contract but because, in the act of assuming, they have imposed it upon themselves. Contract provides a facility the purpose of which is to enable this to be done within the limits prescribed by law. The implication of these premises are much more significant than might be supposed when applied to such areas of contract as formation, consideration, intention to contract, exception clauses, privity and damages. The book concludes with a treatment of the role of assumption in tort. Because of the importance of its subject matter and its wide-ranging treatment, this book should appeal not only to teachers and postgraduate students of contract but also to practitioners in the field and to anyone else with an interest in contract theory
