Contents

Table of Cases
Table of Legislation and Other Materials

Introduction
A Contractual Performance
B The Protection of Contractual Performance
C Remedies under Consideration
D Comparative Considerations
E Reform at European Level
F The Monograph in Outline
   1 The structure of the monograph
   2 The arguments of the monograph in outline

I THE SPECIFIC ENFORCEMENT AND
THE DISCHARGE OF PRIMARY OBLIGATIONS

1 Compulsion
A Introduction
B Specific Remedies in English Contract Law
   1 The award of an agreed sum
   2 Specific relief in equity: specific performance and injunctions
   3 Concluding remarks on specific remedies in English law
C Specific Remedies in French Contract Law
   1 The wide availability of specific remedies
   2 The reasons underlying the wide availability of specific remedies
   3 Concluding remarks on specific remedies in England and France
D A Wider Approach to Specific Remedies in English Contract Law?
   1 The surmountable objections of 'constant supervision' and 'contempt of court'
   2 A narrow approach to the interests of the injured promisee
   3 Further policy objections to specific performance and mandatory injunctions
   4 Widening the availability of specific remedies in English contract law
E Conclusion
2 Termination for Breach of Contract

A Introduction

B Termination for Breach of Contract in English Contract Law
   1 Circumstances that give rise to a right of termination at common law
   2 Termination clauses
   3 Termination and judicial intervention
   4 Concluding remarks on termination in English law

C Termination for Breach of Contract in French Contract Law
   1 The judicial nature of termination
   2 Grace periods (délai de grâce)
   3 No anticipatory breach in French law
   4 Concluding remarks on termination in French law

D Termination: Comparative Remarks
   1 Termination as an indicator of the degree of protection of contractual performance
   2 Internal coherency and consistency in the remedial frameworks of England and France
   3 The protection of performance from the point of view of the promisor

E Conclusion

II THE SECONDARY OBLIGATION TO PAY DAMAGES

3 Compensation

A Introduction

B The Measure of Damages Awards
   1 Introduction
   2 The measure of damages awards in English contract law
   3 The measure of damages awards in French contract law
   4 Reasonableness and the assessment of damages
   5 Conclusion

C The Compensation of Non-Pecuniary Loss
   1 Introduction
   2 The compensation of non-pecuniary loss in English contract law
   3 The compensation of non-pecuniary loss in French contract law
   4 Towards the wider availability of damages for non-pecuniary loss in English contract law?
   5 Conclusion

D Damages for Loss Suffered by Third Parties
   1 Introduction
   2 Damages for loss suffered by third parties in English contract law
   3 Damages for loss suffered by third parties in French contract law
   4 The function of damages: comparative remarks
   5 Conclusion

E Loss Mitigation
   1 Introduction
   2 Loss mitigation in English law
   3 Loss mitigation in French law
## Contents

4 Loss mitigation and the performance interest 151  
5 Conclusion 154  
  
F Restitution 155  
1 Introduction 155  
2 The introduction of gain-based relief in English contract law 156  
3 Gain-based relief and the performance interest 160  
4 Conclusion 166  
  
G Conclusion 166  
  
III ENHANCING THE PROTECTION OF THE PERFORMANCE INTEREST  

4 Deterrence and Punishment 171  
  
A Introduction 171  
  
B Punitive Damages for Breach of Contract in English Law 173  
1 The unavailability of punitive damages for breach of contract 173  
2 Towards the introduction of punitive damages in English contract law? 175  
3 An assessment of the possible introduction of punitive damages in English contract law 181  
  
C Punitive Damages for Breach of Contract in French Law 192  
1 The scope of punitive damages in the Catala proposals 193  
2 Deterrence and punishment in article 1371 of the Catala proposals 195  
3 An assessment of the possible introduction of punitive damages in French contract law 196  
4 Comparative remarks on the introduction of punitive damages in English law and French law 204  
  
D Conclusion 206  
  
5 Agreed Remedies 207  
  
A Introduction 207  
  
B Agreed Remedies and the Performance Interest 208  
1 Specific relief clauses 208  
2 Clauses providing for the cost of cure measure of damages 215  
3 Restitution clauses 217  
4 Penalty clauses 220  
  
C Possible Objections to Remedial Terms Agreed Inter Partes 223  
1 Unfairness and potential abuse 223  
2 The usurpation of the role of the court 230  
3 The deterrent effect of remedial terms 233  
4 Prevention of agreement 234  
5 Efficiency theories 235  
  
D Conclusion 236  
  
Conclusion 237  
  
A The Protection of the Performance Interest in English and French Contract Law 237
Contents

B Explaining the Divergences between English and French Law 239
C Towards the Enhanced Protection of the Performance Interest in English Contract Law 240

Bibliography 243
Index 257