CONTENTS

Preface vii
Table of Cases xiii
Table of Statutes lv
Table of Statutory Instruments lxii
International Conventions and Model Laws lxiii

PART 1: INTRODUCTION

1. Introduction 3
   (a) General 3
   (b) Structure of Book 8
   (c) Some Limitations 9

2. A Brief History of Assignment 11
   (a) Introduction 11
   (b) Choses in Action 11
   (c) Assignment of Choses in Action 19
   (d) Conclusion 27

PART 2: THE NATURE OF ASSIGNMENT

3. Assignment and the Concept of Transfer 31
   (a) Introduction 31
   (b) Meaning of Assignment 32
      (i) Introduction 32
      (ii) Assignment Distinguished from Other Transactions 33
   (c) Assignment as Transfer 35
   (d) The Element of Intention 44
      (i) Introduction 44
      (ii) Outright Assignment and Security Assignments 44
      (iii) Equitable Charges 49
      (iv) Declarations of Trust 52
   (e) The Requirement of a Proprietary Right 53
   (f) Assignment and Privity of Contract 62
4. Equitable Assignments 65
   (a) Introduction 65
   (b) Equitable Assignment of Equitable Interests 66
   (c) Equitable Assignment of Legal Interests Assignable at Law 66
      (i) Introduction 66
      (ii) The Character of an Equitable Assignment of a Legal Right 68
      (iii) Notice and joinder 73
   (d) Equitable Assignment of Legal Interests Not Assignable at Law 90
   (e) Assignment of Future Interests 97

5. Statutory or Legal Assignments 103
   (a) Introduction 103
   (b) The Procedural View 105
   (c) The Substantive View 107
   (d) Conclusion 117

PART 3: ASSIGNMENT OF CONTRACTUAL RIGHTS

6. Assignable Contractual Rights 121
   (a) Introduction 121
   (b) The Requirement of a Chose in Action 122
      (i) Contractual Rights as Choses in Action 122
      (ii) Contractual Rights as Property Rights 133
      (iii) Ownership of Contractual Rights 136
   (c) The Requirement of Present Property 138
      (i) Introduction 138
      (ii) The Distinction between Present and Future Property 139
      (iii) Dealings in Conditional, Contingent and Unconditional Contractual Rights 148
   (d) Division and Separation of Contractual Rights 171
   (e) Restrictions on the Assignment of Contractual Rights 187
      (i) Introduction 187
      (ii) Public Policy Restrictions 187
      (iii) Personal Contractual Rights and Obligations 212
         A. Personal contractual rights 216
         B. Personal obligations 235
      (iv) Contractual Provisions Dealing with Assignment 246
      (v) The principle of Transfer as it Relates to the Personal Rights Rule and Contractual Provisions Dealing with Assignment 278
      (vi) Assignment and the Variation of the Obligations of the Obligor 279
   (f) Assignment of Contractual Burdens 287
Contents

7. Formalities 313
   (a) Introduction 313
   (b) Intention 314
   (c) Subject Matter 330
   (d) Formalities 334
      (i) Equitable Assignments of Choses in Action; the Assignment of Legal Interests 334
      (ii) Equitable Assignments of Choses in Action; the Assignment of Equitable Interests 349
      (iii) Legal Assignments of Choses in Action 360
      (iv) Assignment of Future Contractual Rights 376

PART 4: THE POSITION OF THE PARTIES 381

8. The Position of the Parties 381
   (a) Introduction 381
   (b) Assignor/Obligor 382
   (c) Assignor/Assignee 383
   (d) Assignee/Obligor 386
      (i) The Rights of the Assignee 386
      (ii) The Rights of the Obligor 407
      (iii) The Rights of the Obligor: Transfer and the Obligor’s Ability to Vary the Contract after Notice of Assignment 416
      (iv) The Rights of the Obligor: Transfer and the Obligor’s Defences against the Assignor to which the Assignee is Subject 426
      (v) The Rights of the Obligor: Unconscionable Conduct and the Obligor’s Defences against the Assignor to which the Assignee is Subject 450
      (vi) Counterclaims 458
   (e) Successive Assignments 466
   (f) Insolvency 469
   (g) Controlling the Discretion of the Obligor 470

Index 473