

# Contracting Law

## Student Workbook

FOURTH EDITION

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ALBANY LAW SCHOOL

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## Introduction to the Contracting Law Student Workbook

This *Student Workbook* supplements the Contracting Law Textbook in two ways. It gives students an opportunity to practice analytic skills developed through doctrinal study, and it offers numerous exercises designed to help students learn the substance of contract law and the skills of persuasive legal argument. Doctrinal study develops the lawyering skills of critical reading, argument, narrative, and normative analysis. Because we use judicial opinions, doctrinal study often focuses on these skills as they are used in work associated with litigation. Practicing lawyers actually perform many tasks that are only indirectly related to litigation. Lawyers counsel, draft documents, negotiate, investigate facts, lobby legislators, draft legislation and administrative policies, and engage in community organizing.

A common element in all of this work is the need for good oral and written communication. The *Student Workbook* exercises introduce some of these lawyering tasks and provide opportunities for students to develop their communication skills.

These workbook exercises also contribute to the development of an awareness on the part of the students of the many different contexts in which contract issues arise. For example, you are asked to take note of media stories that invoke contract issues, view films, and analyze agreements that you have signed in exercises that explore the significance of contract—the impact it has on people’s lives on a daily basis.

As a beginning law student, it is also helpful to understand that you are entering a profession that has undergone many changes and continues to change. For example, law teachers, scholars, judges, lawyers and others legal professionals have assessed and continue to develop the goals and various methods for law training. Since the 1960s, there has been an expansion of clinical, writing, and legal research programs, and interdisciplinary teaching materials and approaches in American law schools. In part, these skills-focused and experiential-based developments were responses to criticisms of the inadequacy of traditional doctrinal-centered law school curricula. Lawyers, judges, and legal educators have pointed to the inability of many law students upon graduation to perform basic lawyering tasks without an additional “apprenticeship” period in which these new lawyers learned the “real” skills of lawyering. In the popular image of lawyering, trial attorneys predominate, but lawyers perform many different tasks in a variety of settings. A 1992 report to the American Bar Association,<sup>1</sup> continues to call upon law schools to do much more to prepare students for the range of tasks that lawyers are called upon to per-

form and to conceptualize legal training as a long life process of ongoing professional development and growth.

By providing a variety of different kinds of exercises, we hope that students can use these exercises to learn doctrinal concepts, legal analysis skills, contract theory and to gauge their progress in this learning. The study aids include fact diagrams, case briefs, case grids, doctrinal charts, checklists and feedback forms, and review problems, as described below. These basic types of study aid are repeated throughout the materials, making them easy to use as students gain more familiarity and practice with them.

### Persuasive Legal Argument

To develop the skills of persuasive legal argument, the beginning law student must learn how to take vast amounts of material and sort and find the parts relevant to solving the client’s problem, the issues presented, and use doctrinal and narrative logic. These skills include:

- sorting through a complex story told by the client or understanding the facts in a case that involves multiple parties interacting in a variety of contexts or over a long period of time
- choosing the legal category(ies) that apply to the facts, or the particular doctrines within a particular area of law
- inductive reasoning: comparing the way a doctrine is used or explained in many cases so that you develop some theory about the way the doctrine operates
- analogical reasoning: comparing and contrasting cases to show that your facts or legal issues presented are the same or as different from the facts or legal issues in other cases
- deductive reasoning: beginning with a general proposition and applying it to a particular case
- narrative: The argument in a particular case is persuasive because it is “logical.” In addition to doctrinal logic, the other kind of logic that contributes to the persuasiveness of an argument is the narrative. As chapter one of the textbook introduces, storytelling is important in law and students must learn how to construct an argument using facts in the most effective way. This may include favorable characterization of the facts for your client and drawing inferences from the facts.
- contract theory: Theory refers to the attempts to explain the underlying premises, development and organization of contract law.

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1. The MacCrate Report—Legal Education and Professional Development: An Educational Continuum, a Report of the Task Force on Law Schools and the Profession: Narrowing the Gap. 1992. The Task Force was appointed by Justice Rosalie Wahl of the Minnesota Supreme Court and Chair of the ABA Section of Legal Education. The report was edited by the Task Force Chair, Robert MacCrate.

## Description of Workbook Exercises

### 1. Fact Diagrams

A fact diagram is a visual representation or mapping of factual information presented in a case or a hypothetical. Fact diagrams are useful in understanding a chronology of events and the identity of the people involved in a case, which is necessary to understanding the legal issues raised by the case. In litigation, each side presents a chronology of events and an account of the persons involved through witnesses, physical evidence, written records, and the like. The trier of fact, whether judge or jury, then culls from the evidence and composes an account that seems most likely or most credible.

Depending on the purpose for which one is making a fact diagram, one may include different categories of information. For example, if the case involves a dispute over whether a contract was made, a fact diagram may focus more on the events, conversations, and background facts of negotiation and agreement. The fact diagram illuminates the selective choices involved in a determination of relevance and in the process of fact finding. In general, a fact diagram should answer questions of who, what, when, where, and why. Who is involved? What happened? When did the events occur, and Where? Why did these events occur, or why is there a problem? Finally, the diagram may illuminate what important information is missing and what mode of selection has resulted in it being left out.

### 2. Case Briefs

A case brief is a tool used by law students studying judicial decisions and by lawyers doing legal research. There are several sections in a case brief, which can be re-ordered or varied according to the purpose for which the case brief is being written. In the Student Workbook exercises, the sections of case briefs are facts, procedural history, issues, decision, reasoning, and questions and observations. The value of a case brief is that it requires the writer to separate these important elements of a judicial decision and to carefully analyze each of them. Close study of judicial opinions enables one to learn the craft of legal argument and judgment.

### 3. Case grids

A case grid facilitates comparison of several cases or of two or more opinions within a single case. Cases can be compared on a number of different aspects, including their factual context, their procedural histories, the courts' framing of the legal issues, the courts' reasoning

in application of one legal test or the courts' articulation of different legal tests. Each case grid will focus on selected areas of comparison. Work with case grids can enhance one's skills of case analysis, reconciliation, and distinction, and it can aid in developing the skill of argument through analogy. These skills enhance one's comprehension of doctrinal reasoning and one's understanding of both its reductive tendencies and its capacity for flexibility and change.

### 4. Doctrinal Charts

Doctrinal or summary charts provide an overall visual representation of a doctrine or set of rules. The doctrinal charts include the elements of proof for a particular doctrine or describe the various rules that govern a particular contract area, such as contract formation, consideration, defenses to contract enforcement, or the parol evidence rule. By studying a chart, one can see inter-relationships among discrete concepts or rules and areas of potential controversy and change.

### 5. Checklists and Feedback Forms

At the beginning of law school, the amount of material and the broad range of skills introduced can seem overwhelming. Students need some way to see their progress and to gain a sense of increasing competence. Evaluation and other responses from a teacher or study group colleague is valuable in measuring one's progress, but it is also important to review one's own work and learning. The checklists and feedback forms in the *Student Workbook* are designed as tools of self-evaluation and as models from which students can develop their own tools. At the end of each of the first four chapters of the *Student Workbook*, for example, there is a checklist of the key terms introduced in the Textbook chapter. If these checklists are helpful to you, then you may want to develop similar checklists for the remaining chapters.

### 6. Review Problems

Beginning with Chapter 2, a factual hypothetical is given at the end of each Workbook chapter. Several of these problems are based upon actual disputes and they involve a range of different lawyering skills. The problems involve writing a letter to opposing counsel, drafting a legislative comment on a proposed regulation, negotiating a settlement, drafting a judicial opinion, and writing an interoffice memorandum. Each problem is designed to provide a general review of material covered in the preceding chapter.