

Contents

Table of Principal Cases	xxiii
Preface and Acknowledgments	xxv

PART ONE INTRODUCTION TO CONTRACT LAW

Chapter 1 · Introduction to Contract Law	3
Overview	4
A. The “Why” of Contract Law	4
B. The “Big Picture” of Contract Law	4
C. Common Law Contracts versus U.C.C. Article 2 Contracts	4
Contract Law Policy	5
A. Predictability	5
B. Freedom of Contract	6
C. Fairness	6
D. Efficiency	7
Exercise 1-1: Identifying Policy Rationales	7
The “Big Picture” of Contract Law	8
Common Law Contracts versus U.C.C. Article 2 Contracts	9
Exercise 1-2: Distinguishing Common Law Contracts from U.C.C. Article 2 Contracts	9
Exercise 1-3: The U.C.C.	10
Professional Development Reflection Questions	11

PART TWO CONTRACT FORMATION *Do the Parties Even Have a Deal?*

Chapter 2 · Mutual Assent	15
Chapter Problem	15
Introduction	18
Overview of Chapter 2	19
Communication of Present Commitment	19
Exercise 2-1: Amy-Betty Contract Formation Hypo	19
Table 2-1: Sample Legal Analysis	20
Background Information	20
Exercise 2-2: Rules Addressing the Commitment Requirement in the Restatement (Second) of Contracts	21
The Present Commitment Requirement for Contract Formation	21

Exercise 2-3: <i>Lucy v. Zehmer</i> and Case Reading Skills	22
<i>Lucy v. Zehmer</i>	23
Exercise 2-4: <i>Lucy v. Zehmer</i> Revisited	26
Exercise 2-5: <i>Harvey v. Facey</i>	27
<i>Harvey v. Facey</i>	28
Exercise 2-6: Application of <i>Harvey v. Facey</i>	29
Types of Legal Reasoning	29
Applying Rules to Facts	30
Exercise 2-7: IRAC Application	36
Certainty of Terms	38
Introduction and Section Example	38
Essential Terms	38
Exercise 2-8: Certainty of Terms	39
Special Offer Rules	39
Introduction	39
Note about “General Rules”	40
Advertisements, Circulars, and Quotes as Possible Offers	40
Exercise 2-9: <i>Lefkowitz v. Great Minneapolis Surplus Store</i>	41
<i>Lefkowitz v. Great Minneapolis Surplus Store</i>	41
Exercise 2-10: <i>Lefkowitz</i> Revisited	43
Exercise 2-11: <i>Fairmont Glass Works v. Crunden-Martin Wooden Ware Co.</i>	44
<i>Fairmont Glass Works v. Crunden-Martin Wooden Ware Co.</i>	44
Exercise 2-12: <i>Fairmount Glass Works</i> Revisited	46
Letters of Intent	46
Exercise 2-13: <i>Store Properties v. Neal</i>	47
<i>Store Properties v. Neal</i>	47
Exercise 2-14: <i>Store Properties v. Neal</i> Revisited	50
Requests for Bids	51
Exercise 2-15: Requests for Bids	52
Manner of Acceptance	52
Introduction	52
Exercise 2-16: Introductory Exercise	53
Offeror’s Control over the Manner of Acceptance	53
Exercise 2-17: <i>Kuzmeskus v. Pickup Motor Co.</i>	54
<i>Kuzmeskus v. Pickup Motor Co.</i>	54
Exercise 2-18: <i>Kuzmeskus</i> Revisited	56
Unilateral and Bilateral Contracts	57
Exercise 2-19: <i>Davis v. Jacoby</i>	57
<i>Davis v. Jacoby</i>	58
Exercise 2-20: Unilateral versus Bilateral Contracts	62
Exercise 2-21: Knowledge of an Offer	63
Exercise 2-22: Silence as Acceptance	63
Termination of the Power to Accept	63
Introduction	63
Exercise 2-23: Termination of the Power to Accept	63
Death or Incapacity	64
Revocation	64
Exercise 2-24: “The Brooklyn Bridge Hypothetical”	65
Two Ways an Offeror May Revoke	66

Exercise 2-25: <i>Petterson v. Pattberg</i>	66
<i>Petterson v. Pattberg</i>	66
Exercise 2-26: <i>Petterson</i> Revisited	69
Exercise 2-27: <i>Dickinson v. Dodds</i>	70
<i>Dickinson v. Dodds</i>	70
Exercise 2-28: <i>Dickinson</i> Revisited	72
Lapse and Rejection	72
Exercise 2-29: <i>Akers v. J. B. Sedberry, Inc.</i>	73
<i>Akers v. J. B. Sedberry, Inc.</i>	73
Exercise 2-30: More on Lapse and Rejection	76
Counter-Offers	77
Exercise 2-31: <i>Livingstone v. Evans</i>	77
<i>Livingstone v. Evans</i>	78
Exercise 2-32: <i>Livingstone</i> Revisited	79
The Mailbox Rule	79
Exercise 2-33: The Mailbox Rule	79
Synthesis of Common Law Mutual Assent Law	80
Exercise 2-34: Synthesis of Common Law Mutual Assent Law	80
Mutual Assent under U.C.C. Article 2	83
Introduction	83
Exercise 2-35: A Further Introduction to the U.C.C.	83
The Relevant U.C.C. Rules	84
Exercise 2-36: U.C.C. Mutual Assent Rules	84
Exercise 2-37: U.C.C. Sections 2-204 and 2-207	86
Exercise 2-38: <i>Wachter Management Co. v. Dexter & Chaney, Inc.</i>	86
<i>Wachter Management Co. v. Dexter & Chaney, Inc.</i>	87
Exercise 2-39: <i>Wachter</i> Revisited and Chapter Wrap-Up	93
Chapter Problem Revisited	93
Professional Development Reflection Questions	93
 Chapter 3 • The Consideration Requirement for Contract Formation	 95
Exercise 3-1: Chapter Problem	95
Introduction	99
Preliminary Questions	99
Overview of Chapter 3	100
The Basic Consideration Rule and Forbearance as Consideration	101
Exercise 3-2: The Basic Consideration Rule and Forbearance as Consideration	101
Exercise 3-3: <i>Hamer v. Sidway</i>	102
<i>Hamer v. Sidway</i>	102
Exercise 3-4: <i>Hamer</i> Revisited	104
Adequacy of Consideration, Sufficiency of Consideration, and Related Topics	105
Exercise 3-5: <i>Schnell v. Nell</i>	105
<i>Schnell v. Nell</i>	105
Exercise 3-6: <i>Schnell</i> Revisited	108
Exercise 3-7: <i>Batsakis v. Demotis</i>	108
<i>Batsakis v. Demotis</i>	109
Exercise 3-8: <i>Batsakis</i> Revisited	111
Past and Moral Consideration	112

Exercise 3-9: <i>Mills v. Wyman</i>	112
<i>Mills v. Wyman</i>	112
Exercise 3-10: <i>Mills</i> Revisited	114
Settlement of Invalid Claims	115
Exercise 3-11: <i>Fiege v. Boehm</i>	116
<i>Fiege v. Boehm</i>	116
Exercise 3-12: <i>Fiege</i> Revisited	119
The Pre-Existing Duty Rule	120
Exercise 3-13: The Pre-Existing Duty Rule	120
Exercise 3-14: <i>Alaska Packers' Assn. v. Domenico</i>	121
<i>Alaska Packers' Association v. Domenico</i>	121
Exercise 3-15: <i>Alaska Packers</i> Revisited	124
Exercise 3-16: <i>AFC Interiors v. DiCello</i>	125
<i>AFC Interiors v. DiCello</i>	126
Exercise 3-17: <i>AFC Interiors</i> Revisited	131
Illusory Promises	131
A. Introduction	131
B. Illusory Promises	132
C. What Makes Promises Illusory	134
Exercise 3-18: Illusory-Non-Illusory Promises	135
Exercise 3-19: <i>Strong v. Sheffield</i>	137
<i>Strong v. Sheffield</i>	137
Exercise 3-20: <i>Omni Group, Inc. v. Seattle-First National Bank</i>	139
<i>Omni Group, Inc. v. Seattle-First National Bank</i>	139
Exercise 3-21: <i>Omni</i> Revisited	142
Exercise 3-22: <i>Wood v. Lucy, Lady Duff-Gordon</i>	143
<i>Wood v. Lucy, Lady Duff-Gordon</i>	143
Exercise 3-23: Illusory Promise Problems	144
Exercise 3-24: Recurring Illusory Promise Issues	145
Chapter Problem Revisited	145
Professional Development Reflection Questions	147
 Chapter 4 • Promissory Estoppel	 149
Exercise 4-1: Chapter Problem	149
Introduction to Promissory Estoppel	151
Overview of Chapter 4	151
The Elements of Promissory Estoppel	152
Exercise 4-2: Promissory Estoppel	152
Promissory Estoppel as a Substitute for Consideration	153
Exercise 4-3: <i>Kirksey and Ricketts</i>	153
<i>Kirksey v. Kirksey</i>	153
<i>Ricketts v. Scothorn</i>	154
Exercise 4-4: <i>Ricketts v. Scothorn</i> Revisited	156
Exercise 4-5: <i>East Providence Credit Union v. Geremia</i>	157
<i>East Providence Credit Union v. Geremia</i>	157
Promissory Estoppel as a Substitute for a Required Writing	160
Exercise 4-6: Promissory Estoppel and Statutes of Fraud	160
Promissory Estoppel as a Mechanism for Making Certain Offers Irrevocable	160
Exercise 4-7: <i>Drennan v. Star Paving Co.</i>	160

<i>Drennan v. Star Paving Co.</i>	161
Exercise 4-8: <i>Drennan</i> Revisited	163
Promissory Estoppel as a Mechanism for Policing Unfair Bargaining Behavior	163
Exercise 4-9: <i>Hoffman v. Red Owl Stores, Inc.</i>	163
<i>Hoffman v. Red Owl Stores, Inc.</i>	164
Chapter Problem Revisited	169
Professional Development Reflection Questions	170

PART THREE

CONTRACT DEFENSES

Can Either Party Get Out of the Deal?

Chapter 5 • Contract Defenses	175
Chapter Problems	175
Exercise 5-1: Case Evaluation	175
Exercise 5-2: Client Interview and Advice	175
Introduction to Contract Defenses	177
Overview of Chapter 5	179
Deception	179
Exercise 5-3: Deception Example	179
Misrepresentation	180
1. Materiality	180
2. False Statements of Fact, Intentions, and Opinions	180
Exercise 5-4: False Statements of Fact, Intentions, and Opinions	181
3. The Requisite State of Mind	181
Exercise 5-5: State-of-Mind Problem	183
Exercise 5-6: State-of-Mind Problems	184
4. Justifiable and Actual Reliance	185
5. Damages	185
Exercise 5-7: Falsity, Reliance, and Damages	185
Exercise 5-8: <i>Cousineau v. Walker</i>	187
<i>Cousineau v. Walker</i>	187
Exercise 5-9: <i>Cousineau</i> Revisited	192
Exercise 5-10: Material Fact versus Justifiable Reliance versus Actual Reliance	194
Non-Disclosure	195
Exercise 5-11: Duty to Disclose	196
Exercise 5-12: Duty to Disclose	197
Concealment	198
Exercise 5-13: Misrepresentation, Non-Disclosure, or Concealment?	198
Exercise 5-14: Creating Hypotheticals	199
Mistake	199
A. Mutual Mistake	200
Exercise 5-15: Section Example	200
Exercise 5-16: <i>Sherwood v. Walker</i>	200
<i>Sherwood v. Walker</i>	201
Exercise 5-17: <i>Sherwood</i> Revisited	205
Exercise 5-18: <i>Lenawee County Board of Health v. Messerly</i>	206
<i>Lenawee County Board of Health v. Messerly</i>	206
Exercise 5-19: <i>Messerly</i> Revisited	210

Exercise 5-20: <i>Wood v. Boynton</i>	211
<i>Wood v. Boynton</i>	211
Exercise 5-21: <i>Wood</i> Revisited	214
B. Unilateral Mistake	214
Exercise 5-22: <i>Drennan v. Star Paving Co.</i>	215
<i>Drennan v. Star Paving Co.</i>	216
Exercise 5-23: <i>Drennan</i> Revisited	216
Duress	217
Exercise 5-24: Duress	218
Exercise 5-25: <i>Austin Instrument, Inc. v. Loral Corp.</i>	218
<i>Austin Instrument, Inc. v. Loral Corporation</i>	219
Exercise 5-26: <i>Austin Instrument</i> Revisited	222
Undue Influence	223
Exercise 5-27: Undue Influence	223
Exercise 5-28: <i>Odorizzi v. Bloomfield School District</i>	223
<i>Odorizzi v. Bloomfield School District</i>	224
Exercise 5-29: <i>Odorizzi</i> Revisited	229
Illegality	230
A. Contracts Prohibited by Statute	230
B. Contracts in Violation of Licensing Statutes	230
Exercise 5-30: Contracts in Violation of Licensing Statutes	231
C. Covenants Not to Compete	231
Exercise 5-31: <i>Wood v. May</i>	231
<i>Wood v. May</i>	232
Exercise 5-32: <i>Wood</i> Revisited	238
D. Tangential Illegality	239
Exercise 5-33: Tangential Illegality	239
Incapacity	239
Exercise 5-34: Incapacity	239
Unconscionability	240
Exercise 5-35: <i>Williams v. Walker-Thomas Furniture Co.</i>	240
<i>Williams v. Walker-Thomas Furniture Co.</i>	241
Exercise 5-36: <i>Williams</i> Revisited	243
Statute of Frauds	244
A. Introduction	244
B. Statute of Frauds Example	245
C. Is a contract subject to a statute of frauds?	245
Exercise 5-37: Suretyship Contracts	246
Exercise 5-38: One-Year Provision	247
D. Does a contract comply with the writing requirement of the applicable statute of frauds?	247
Exercise 5-39: The Signed Writing Requirement	247
E. Is a contract enforceable notwithstanding its failure to comply with the writing requirement of an applicable statute of frauds?	248
F. U.C.C. Statute of Frauds	248
Exercise 5-40: U.C.C. Statute of Frauds	248
Chapter Recap	248
Exercise 5-41: Contract Defenses	249
Chapter Problems Revisited	250

A. Exercise 5-1: Stacy Landon Car Problem	250
B. Exercise 5-2: Plymouth Shipping Supply Problem	250
Professional Development Reflection Questions	252

PART FOUR

CONTRACT REMEDIES

*What Does a Party Who Sues for Breach
Get if She Wins?*

Chapter 6 • Contract Damages	255
Exercise 6-1: Chapter Problem	255
Introduction to Contract Remedies	255
A. Chapter Introduction	255
B. Types of Contract Breaches	257
Overview of Chapter 6	257
Introduction to Damages	257
The Measure of Damages	258
A. General Damages	259
B. Special Damages	262
C. Costs and Losses Avoided	262
Exercise 6-2: Measure of Damages	262
Exercise 6-3: <i>Donovan v. Bachstadt</i>	263
<i>Donovan v. Bachstadt</i>	263
Exercise 6-4: <i>Neri v. Retail Marine Corp.</i>	267
<i>Neri v. Retail Marine Corp.</i>	268
Exercise 6-5: <i>Wilson Salvage Co. v. Hays</i>	271
<i>Wilson Salvage Co. v. Hays</i>	271
Exercise 6-6: <i>Groves and Peevyhouse</i>	274
<i>Groves & Sons v. John Wunder Co.</i>	275
<i>Peevyhouse v. Garland Coal & Mining Co.</i>	277
Exercise 6-7: <i>Groves and Peevyhouse Revisited</i>	281
Limitations on Damages	283
A. Avoidability	283
Exercise 6-8: Avoidability	283
Exercise 6-9: <i>Rockingham County v. Luten Bridge Co.</i>	284
<i>Rockingham County v. Luten Bridge Co.</i>	284
Exercise 6-10: <i>Luten Bridge Revisited</i>	288
Exercise 6-11: <i>Hussey and Parker</i>	288
<i>Hussey v. Holloway</i>	289
<i>Parker v. Twentieth Century-Fox Film Corp.</i>	291
Exercise 6-12: <i>Hussey and Parker Revisited</i>	297
B. Foreseeability	297
Exercise 6-13: Foreseeability	297
Exercise 6-14: <i>Hadley v. Baxendale</i>	298
<i>Hadley v. Baxendale</i>	298
Exercise 6-15: <i>Hadley Revisited</i>	304
Exercise 6-16: <i>Victoria Laundry v. Newman</i>	304
<i>Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd.</i>	304
Exercise 6-17: <i>Prutch v. Ford Motor Co.</i>	310

<i>Prutch v. Ford Motor Co.</i>	311
Exercise 6-18: Foreseeability	312
C. Certainty	313
Exercise 6-19: Certainty	313
Exercise 6-20: <i>Freund</i> and <i>Mindgames, Inc.</i>	313
<i>Freund v. Washington Square Press, Inc.</i>	313
<i>MindGames, Inc. v. Western Publishing Co., Inc.</i>	316
Exercise 6-21: Limitations on Damages	323
Reliance Damages	324
A. Introduction	324
Exercise 6-22: Reliance Damages	325
Exercise 6-23: <i>Reimer v. Badger</i>	325
<i>Reimer v. Badger Wholesale Co., Inc.</i>	325
Exercise 6-24: <i>Reimer</i> Revisited	328
Exercise 6-25: <i>Sullivan v. O'Connor</i>	328
<i>Sullivan v. O'Connor</i>	328
Exercise 6-26: <i>Sullivan</i> Revisited	333
<i>Hoffman v. Red Owl Stores, Inc.</i>	333
Exercise 6-27: <i>Hoffman</i> Revisited	336
Chapter Problem Revisited	336
Professional Development Reflection Questions	337
Chapter 7 • Restitution	339
Exercise 7-1: Chapter Problem	339
Introduction to Restitution	342
Overview of Chapter 7	344
Circumstances under Which Courts Award Restitution	344
A. Restitution to a Non-Breaching Party	344
Exercise 7-2: <i>Chodos v. West Publishing Co.</i>	344
<i>Chodos v. West Publishing Co.</i>	344
Exercise 7-3: <i>United States v. Algernon Blair, Inc.</i>	345
<i>United States v. Algernon Blair, Inc.</i>	346
Exercise 7-4: <i>Algernon Blair</i> Revisited	347
B. Restitution as an Alternative to Suing for a Tort	348
Exercise 7-5: Restitution as an Alternative to Suing for a Tort	348
C. Restitution for Erroneous Performance of an Alleged Contract	348
Exercise 7-6: <i>Earheart v. William Low Co.</i>	349
<i>Earhart v. William Low Co.</i>	349
D. Restitution to a Party Who Has Breached a Contract	352
Exercise 7-7: <i>Kutzin v. Pirnie</i>	352
<i>Kutzin v. Pirnie</i>	353
Exercise 7-8: Restitution Wrap-Up	357
Chapter Problem Revisited	357
Professional Development Reflection Questions	358
Chapter 8 • Agreed Damages	359
Exercise 8-1: Chapter Problem	359
Introduction to Agreed Damages	359
Introduction to the Validity of Liquidated Damages Clauses	360
Overview of Chapter 8	362

Evaluating the Enforceability of an Agreed Damages Clause	362
Exercise 8-2: <i>Leeber v. Deltona Corp.</i>	362
<i>Leeber v. Deltona Corp.</i>	362
Exercise 8-3: <i>Leeber</i> Revisited	366
Exercise 8-4: <i>United States v. Hayes</i>	366
<i>United States v. Hayes</i>	366
Chapter Problem Revisited	369
Professional Development Reflection Questions	371
Chapter 9 • Coercive Equitable Relief	373
Exercise 9-1: Chapter Problem	373
Coercive Equitable Relief: Introduction to Specific Performance and	
Injunctions against Breach	374
Overview of Chapter 9	375
The Basic Requirement for Specific Performance: Inadequacy	376
Exercise 9-2: Inadequacy	376
<i>Campbell Soup Co. v. Wentz</i>	377
Exercise 9-3: <i>Campbell Soup Co. v. Wentz</i> Revisited	379
Discretionary Considerations in Granting Specific Performance	380
Exercise 9-4: Fairness	380
Exercise 9-5: <i>Laclede Gas Co. and Van Wagner</i>	380
<i>Laclede Gas Co. v. Amoco Oil Co.</i>	381
<i>Van Wagner Advertising Corp. v. S & M Enterprises et al.</i>	384
Exercise 9-6: <i>Laclede Gas Co. and Van Wagner Advertising Corp.</i> Revisited	388
Exercise 9-7: <i>Travellers International</i>	388
<i>Travellers Int'l, AG v. Trans World Airlines, Inc.</i>	388
Exercise 9-8: <i>Travellers International</i> Revisited	392
Exercise 9-9: <i>Green</i>	393
<i>Green v. Higgins</i>	393
Injunctions to Enforce Covenants Not to Compete	396
Exercise 9-10: Covenants Not to Compete Made <i>During</i> Employment	397
Exercise 9-11: <i>DeSantis and A.N. Deringer</i>	397
<i>DeSantis v. Wackenhut Corp.</i>	398
<i>A.N. Deringer, Inc. v. Strough</i>	401
Exercise 9-12: <i>DeSantis and A.N. Deringer, Inc.</i> Revisited	406

PART FIVE

CONTRACT MEANING

What, Exactly, Has Each of the Parties Agreed to?

Introduction to Part Five	411
Exercise: Contract Meaning	411
Chapter 10 • The Parol Evidence Rule	419
Exercise 10-1: Chapter Problem	419
Introduction to Contract Meaning and Contract Performance	420
Introduction to the Parol Evidence Rule	421
The Basic Idea	421
The Parol Evidence Rule Rules	422
Overview of Chapter 10	424

Basic Terminology	424
Exercise 10-2: Basic Terminology and Policy for the Parol Evidence Rule	424
The Types of Problems to Which the Parol Evidence Rule Applies	425
Exercise 10-3: Spotting Parol Evidence Issues	425
The Degree of Integration and the Question of Consistency	426
Introduction	426
Summary of Doctrine	427
Exercise 10-4: U.C.C. and <i>Mitchill</i>	428
<i>Mitchill v. Lath</i>	428
Exercise 10-5: <i>Masterson v. Sine</i>	433
<i>Masterson v. Sine</i>	433
Exercise 10-6: <i>Lee v. Joseph E. Seagram & Sons</i>	438
<i>Lee v. Joseph E. Seagram & Sons, Inc.</i>	438
Exercise 10-7: U.C.C. Section 2-202	441
Exercise 10-8: <i>Luria Bros v. Piolet Bros.</i>	441
<i>Luria Bros. & Co., Inc. v. Piolet Bros. Scrap Iron & Metal, Inc.</i>	442
Exercise 10-9: <i>Mitchill, Masterson, Lee, U.C.C. § 2-202, and Luria Bros.</i>	
Revisited	446
Exceptions to the Parol Evidence Rule	446
An Oral Condition Precedent to Formation	447
Exercise 10-10: Oral Condition Precedent to Formation	447
Evidence of Fraud, Mistake, and the Like	447
Exercise 10-11: Introductory Questions Regarding Evidence of	
Invalidating Causes	447
Exercise 10-12: <i>Morris v. Morris</i>	447
<i>Morris v. Morris</i>	448
Evidence to Help Interpret an Ambiguous Contract	450
Exercise 10-13: Restatement (Second) Section 2-214(c) and	
<i>Bethlehem Steel</i>	450
<i>Bethlehem Steel Co. v. Turner Constr. Co.</i>	450
Exercise 10-14: <i>Pacific Gas & Electric Co.</i>	453
<i>Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.</i>	454
Exercise 10-15: Restatement (Second) Section 2-214(c),	
<i>Bethlehem Steel and Pacific Gas & Elec. Co. Revisited</i>	456
Exercise 10-16: Synthesis of Parol Evidence Rules	456
Exercise 10-17: Parol Evidence Rule in Your State	456
Exercise 10-18: Contract Editing Task	456
Chapter Problem Revisited	456
Professional Development Reflection Questions	458
 Chapter 11 • Contract Interpretation	 459
Exercise 11-1: Chapter Problem	459
Introduction to Contract Interpretation	463
Overview of Chapter 11	464
Identification of Ambiguities	464
Exercise 11-2: Patent Ambiguity	467
Interpretation of Ambiguous Contracts	469
Exercise 11-3: Interpretation of Ambiguities	469
Exercise 11-4: Contract Interpretation Rules	470

Exercise 11-5: <i>Frigaliment and Landon</i>	471
<i>Frigaliment Importing Co v. B.N.S. International Sales Corp.</i>	471
<i>Landon v. Twentieth Century-Fox Film Corp.</i>	476
Exercise 11-6: <i>Landon and Frigaliment</i> Revisited	481
Exercise 11-7: <i>Raffles v. Wichelhaus</i>	483
<i>Raffles v. Wichelhaus</i>	483
Exercise 11-8: <i>Raffles</i> Revisited	484
Identifying and Filling Contract Gaps	484
Exercise 11-9: Standardized Implied Terms	485
Exercise 11-10: <i>Haines v. City of New York</i>	485
<i>Haines v. City of New York</i>	485
Exercise 11-11: <i>Haines</i> Revisited	487
Chapter Problem Revisited	488
Professional Development Reflection Questions	488

PART SIX

CONTRACT PERFORMANCE AND NON-PERFORMANCE

In What Order Were the Parties to Perform and Is There Any Justification for Any Non-Performance?

Chapter 12 · Express Conditions, Constructive Conditions, and Excuse and Discharge	491
Exercise 12-1: Chapter Problem	491
Introduction to Transactional Law Practice	493
Tina L. Stark, <i>Thinking Like a Deal Lawyer</i>	493
Introduction	495
Introduction to Conditions	496
Types of Conditions	497
Overview of Chapter 12	498
Express Conditions	499
Creation of Express Conditions	499
Types of Express Conditions	500
Creation and Occurrence of Express Conditions	500
Exercise 12-2: <i>Tacoma Northpark, LLC v. NW, LLC and Howard v. Federal Crop Insurance Corp.</i>	500
<i>Tacoma Northpark, LLC v. NW, LLC</i>	501
<i>Howard v. Federal Crop Ins. Corp.</i>	504
Exercise 12-3: <i>Oppenheimer v. Oppenheim</i>	507
<i>Oppenheimer v. Oppenheim</i>	508
“Pay When Paid” Clauses	512
Exercise 12-4: <i>Southern States Masonry v. J.A. Jones Construction</i>	512
<i>Southern States Masonry v. J.A. Jones Construction</i>	513
Exercise 12-5: <i>Southern States Masonry</i> Revisited	519
“Time Is of the Essence” Clauses	520
Exercise 12-6: <i>Pederson v. McGuire</i>	520
<i>Pederson v. McGuire</i>	520
Exercise 12-7: <i>Pederson v. McGuire</i> Revisited	522
“Satisfaction” Clauses	523
Exercise 12-8: <i>Mattei v. Hopper</i>	523

<i>Mattei v. Hopper</i>	523
Exercise 12-9: <i>Mattei v. Hopper</i> Revisited	525
Express Condition Review	525
Exercise 12-10: Express Condition Problems and Exercises	525
Constructive Conditions	527
Review of Introduction to Contract Meaning and Contract Performance	527
Introduction to Constructive Conditions	528
Effect of Constructive Conditions	529
Exercise 12-11: Effect of Constructive Conditions	529
Creation of Constructive Conditions	530
Exercise 12-12: Creation of Constructive Conditions: <i>Kingston v. Preston</i>	530
<i>Kingston v. Preston</i>	531
Exercise 12-13: Creation of Constructive Conditions (cont'd):	
<i>Kingston v. Preston</i> Revisited and <i>Price v. Van Lint</i>	533
<i>Price v. Van Lint</i>	533
Exercise 12-14: <i>Ziehen v. Smith</i> and <i>Stewart v. Newbury</i>	538
<i>Ziehen v. Smith</i>	539
<i>Stewart v. Newbury</i>	541
Exercise 12-15: <i>Ziehen v. Smith</i> and <i>Stewart v. Newbury</i> Revisited	543
Occurrence of Constructive Conditions	544
Exercise 12-16: Substantial Performance	544
Exercise 12-17: <i>Plante v. Jacobs</i>	544
<i>Plante v. Jacobs</i>	545
Exercise 12-18: <i>Plante v. Jacobs</i> Revisited	548
Performance under Article 2 of the U.C.C.	548
Introduction	548
Exercise 12-19: Contract Performance under Article 2 of the U.C.C.	549
Divisibility	550
Exercise 12-20: <i>Sterling v. Gregory</i> and <i>Tipton v. Feitner</i>	550
<i>Sterling v. Gregory</i>	550
<i>Tipton v. Feitner</i>	552
Exercise 12-21: <i>Sterling v. Gregory</i> and <i>Tipton v. Feitner</i> Revisited	555
Excuse of Conditions and Discharge of Obligations	556
Introduction	556
Non-Occurrence of a Condition	558
Exercise 12-22: Non-Occurrence as a Ground for Discharge	558
Waiver, Estoppel, and Prevention/Failure to Cooperate/Bad Faith	559
Exercise 12-23: <i>Shultz v. Los Angeles Dons, Inc.</i> , <i>Prousi v. Cruisers Div.</i>	
<i>of KCS Intern., Inc.</i> , and <i>Fay v. Moore</i>	559
<i>Shultz v. Los Angeles Dons, Inc.</i>	560
<i>Prousi v. Cruisers Div. of KCS Intern., Inc.</i>	563
<i>Fay v. Moore</i>	565
Exercise 12-24: <i>Shultz</i> , <i>Prousi</i> and <i>Fay</i> Revisited	567
Extreme Forfeiture	568
Exercise 12-25: <i>Alcazar v. Hayes</i>	568
<i>Alcazar v. Hayes</i>	568
Exercise 12-26: <i>Alcazar v. Hayes</i> Revisited	574
Anticipatory Repudiation and Failure of Assurances	574
Introduction	574

Exercise 12-27: <i>Wallace Real Estate Investment, Inc. v. Groves</i>	575
<i>Wallace Real Estate Investment, Inc. v. Groves</i>	575
Exercise 12-28: <i>Wallace Real Estate Investment, Inc. v. Groves</i> Revisited	577
Exercise 12-29: <i>K & G Construction Co. v. Harris</i>	578
<i>K & G Construction Co. v. Harris</i>	578
Exercise 12-30: <i>Cobb v. Pacific Mutual Life Insurance Co.</i>	583
<i>Cobb v. Pacific Mutual Life Insurance Co.</i>	583
Exercise 12-31: <i>Cobb v. Pacific Mutual Life Insurance Co.</i> Revisited	588
Exercise 12-32: <i>Drake v. Wickwire</i>	588
<i>Drake v. Wickwire</i>	589
Exercise 12-33: <i>AMF v. McDonalds</i>	593
<i>AMF, Inc. v. McDonald's Corp.</i>	593
Exercise 12-34: <i>AMF v. McDonald's</i> Revisited	597
Impracticability/Impossibility and Frustration of Purpose	597
Impracticability	597
Exercise 12-35: Introductory Impracticability Hypothetical	597
Exercise 12-36: <i>Taylor v. Caldwell</i>	598
<i>Taylor v. Caldwell</i>	599
Exercise 12-37: <i>Taylor v. Caldwell</i> Revisited	602
Exercise 12-38: <i>National Association of Postmasters of U.S. (NAPUS) v. Hyatt Regency Washington</i>	603
<i>National Ass'n of Postmasters of U.S. v. Hyatt Regency Washington</i>	603
Exercise 12-39: <i>National Association of Postmasters of U.S. v. Hyatt Regency Washington</i> Revisited	606
Exercise 12-40: <i>American Trading and Production Corp. v. Shell International Marine, Ltd.</i> (a/k/a the Suez Canal case) and <i>Mineral Park Land Co. v. Howard</i>	607
<i>American Trading & Production Corp. v. Shell International Marine, Ltd.</i>	607
<i>Mineral Park Land Co. v. Howard</i>	610
Exercise 12-41: <i>American Trading and Production Corp. v. Shell International Marine, Ltd.</i> (a/k/a the Suez Canal case) and <i>Mineral Park Land Co. v. Howard</i> Revisited	612
Exercise 12-42: <i>Mutual Life Insurance Co. of New York v. Johnson</i>	613
<i>Mutual Life Ins. Co. of New York v. Johnson</i>	613
Frustration of Purpose	614
Exercise 12-43: Introduction to Frustration of Purpose	614
Exercise 12-44: <i>Krell v. Henry</i>	615
<i>Krell v. Henry</i>	616
Exercise 12-45: <i>Krell v. Henry</i> Revisited	619
Exercise 12-46: <i>Aluminum Co. of America v. Essex Group, Inc.</i>	620
<i>Aluminum Co. of America v. Essex Group, Inc.</i>	620
Exercise 12-47: Distinguishing Impracticability from Frustration	631
Chapter Problem Revisited	632
Professional Development Reflection Questions	632

PART SEVEN

NON-PARTY CONTRACT RIGHTS

Other Than the Parties, Who Else Can Enforce a Deal?

Chapter 13 • Third-Party Beneficiaries	635
Exercise 13-1: Chapter Problem	635
Overview of Chapter 13	640
Contract Law Graphic Organizer	640
Exercise 13-2: Preliminary Questions	640
Introduction to Third-Party Beneficiary Contracts and Terminology	640
Exercise 13-3: Third-Party Beneficiary Contract versus Assignment and Delegation versus Novation	643
Creation of Third-Party Beneficiaries	644
Intended Third-Party Beneficiaries	644
Exercise 13-4: <i>Lawrence v. Fox</i>	644
<i>Lawrence v. Fox</i>	645
Exercise 13-5: <i>Seaver v. Ransom</i>	647
<i>Seaver v. Ransom</i>	648
Exercise 13-6: Intended versus Incidental Beneficiaries	650
Third-Party Beneficiaries of Attorney-Client Contracts	652
Exercise 13-7: <i>Heyer v. Flaig</i>	653
<i>Heyer v. Flaig</i>	653
Third-Party Beneficiaries of Government Contracts	657
Exercise 13-8: <i>H.R. Moch Co. v. Rensselaer Water Co.</i>	657
<i>H.R. Moch Co. v. Rensselaer Water Co.</i>	657
Exercise 13-9: <i>Martinez v. Socoma Companies</i>	659
<i>Martinez v. Socoma Companies</i>	660
Exercise 13-10: Third-Party Beneficiaries and Government Contracts	667
Statutory Third-Party Beneficiaries	667
Exercise 13-11: U.C.C. Warranty Beneficiaries	667
Vesting of Third-Party Beneficiaries' Rights	668
Exercise 13-12: <i>Robson v. Robson</i>	668
<i>Robson v. Robson</i>	669
Exercise 13-13: Vesting of Third Party Rights ⁵	672
Enforcement of Rights and Defenses	674
Enforcement by Third-Party Beneficiaries	674
Exercise 13-14: Enforcement by Third-Party Beneficiaries	674
Promisees' Rights Against Promisors	675
Exercise 13-15: Promisees' Rights	675
Promisors' Defenses	675
Exercise 13-16: <i>Rouse v. U.S.</i>	675
<i>Rouse v. United States</i>	676
Exercise 13-17: Promisors' Defenses	677
Chapter Problem Revisited	678
Professional Development Reflection Questions	678
 Chapter 14 • Assignment, Delegation, and Novation	 681
Exercise 14-1: Chapter Problem — Trial Memorandum	681
Exercise 14-2: Contract Drafting	684

Overview of Chapter 14	684
Contract Law Graphic Organizer	685
Introduction to Assignments and Delegations and Novations	685
Exercise 14-3: Third-Party Beneficiaries, Assignments, Delegations, and Novations	685
Assignments of Rights and Delegations of Duties	686
What Rights May Be Assigned and What Duties May Be Delegated?	686
Exercise 14-4: <i>Globe & Rutgers Fire-Insurance Co. v. Jones</i>	686
<i>Globe & Rutgers Fire-Insurance Co. v. Jones</i>	687
Exercise 14-6: <i>The Macke Co. v. Pizza of Gaithersburg, Inc.</i>	689
<i>Macke Co. v. Pizza of Gaithersburg, Inc.</i>	689
Exercise 14-7: <i>Globe</i> and <i>Macke</i> Revisited	693
Requirements for Effective Assignments and Delegations	696
Exercise 14-8: <i>Baker v. Eufaula Concrete Co.</i>	696
<i>Baker v. Eufaula Concrete Co.</i>	696
Exercise 14-9: Mode of Assignment	699
Rights and Liabilities of Parties Involved with Assignments and Delegations	700
Exercise 14-10: <i>Imperial Refining Co. v. Kanotex Refining Co.</i>	700
<i>Imperial Refining Co. v. Kanotex Refining Co.</i>	701
Exercise 14-11: <i>Imperial Refining</i> Revisited	705
Exercise 14-12: Rights and Liabilities	706
Novations	707
Exercise 14-13: Novations	708
Chapter Problems Revisited	709
Exercise 14-1: Trial Memorandum	709
Exercise 14-2: Contract Drafting	710
Professional Development Reflection Questions	711

PART EIGHT

CONTRACT LAW PROBLEMS

*How Do Contract Lawyers Use Contract Law
to Analyze and Solve Client Problems?*

Chapter 15 • Contract Law Problem-Solving	715
Explanation of Objectives	715
Overview of Chapter 15	715
Analyzing Contracts-Specific Problems	716
Syntheses of Contract Law	716
Exercise 15-1: Synthesis Exercises	716
Analysis of Contracts-Specific Problems	718
Table 15-1: Analyzing Contract Performance Essay Exam Questions	718
Table 15-2: Analyzing Contract Interpretation Issues	719
“Think Aloud” Demonstration	719
Exercise 15-2: Sample Problem— <i>Bob v. Felicia</i>	720
Exercise 15-3: Think-Aloud Analysis of <i>Bob v. Felicia</i> Problem	720
Comments Regarding the above “Think Aloud”	724
Problems	724
Exercise 15-4: Contract Law-Specific Problem 1	724
Exercise 15-5: Contract Law-Specific Problem 2	725

Exercise 15-6: Contract Law-Specific Problem 3	726
Exercise 15-7: Contract Law-Specific Problem 4	727
Exercise 15-8: Contract Law-Specific Problem 5	728
Exercise 15-9: Contract Law-Specific Problem 6	728
Exercise 15-10: Contract Law-Specific Problem 7	729
Practicing Contract Law with Professionalism	730
Introduction to Practicing Contract Law with Professionalism	730
Problems	733
Exercise 15-11: Practice Problem 1—Objective Memorandum	733
Exercise 15-12: Practice Problem 2: Draft a Client Engagement Letter	739
Table 15-3: Questions You Should Ask Yourself When Using a Form	741
Table 15-4: Client Engagement Letter Form	743
Exercise 15-13: Practice Problem 3: Evaluate a Client's Proposed Contract	744
Exercise 15-14: Practice Problem 4: Drafting a Motion to Dismiss for Failing to State a Cause of Action	747
Exercise 15-15: Practice Problem 5: Tribal Coal Mining Contract Analysis and Drafting	751
Professional Development Reflection Questions	752
Index	753

Table of Principal Cases

- A.N. Deringer, Inc. v. Strough, 401
AFC Interiors v. DiCello, 126
Akers v. J. B. Sedberry, Inc., 73
Alaska Packers' Association v. Domenico, 121
Alcazar v. Hayes, 570
Aluminum Co. of America v. Essex Group, Inc., 622
American Trading & Production Corp. v. Shell International Marine, Ltd., 609
AMF, Inc. v. McDonald's Corp., 595
Austin Instrument, Inc. v. Loral Corporation, 219
Baker v. Eufaula Concrete Co., 698
Batsakis v. Demotsis, 109
Bethlehem Steel Co. v. Turner Constr. Co., 450
Campbell Soup Co. v. Wentz, 377
Chodos v. West Publishing Co., 344
Cobb v. Pacific Mutual Life Insurance Co., 585
Cousineau v. Walker, 187
Davis v. Jacoby, 58
DeSantis v. Wackenhut Corp., 398
Dickinson v. Dodds, 70
Donovan v. Bachstadt, 263
Drake v. Wickwire, 591
Drennan v. Star Paving Co., 161, 216
Earhart v. William Low Co., 349
East Providence Credit Union v. Geremia, 157
Fairmount Glass Works v. Crunden-Martin Wooden Ware Co., 44
Fay v. Moore, 567
Fiege v. Boehm, 116
Freund v. Washington Square Press, Inc., 313
Frigaliment Importing Co v. B.N.S. International Sales Corp., 473
Globe & Rutgers Fire-Insurance Co. v. Jones, 689
Green v. Higgins, 393
Groves & Sons v. John Wunder Co., 275
H.R. Moch Co. v. Rensselaer Water Co., 659
Hadley v. Baxendale, 298
Haines v. City of New York, 487
Hamer v. Sidway, 102
Harvey v. Facey, 28
Heyer v. Flaig, 655
Hoffman v. Red Owl Stores, Inc., 164, 333
Howard v. Federal Crop Ins. Corp., 506
Hussey v. Holloway, 289
Imperial Refining Co. v. Kanotex Refining Co., 703
K & G Construction Co. v. Harris, 580
Kingston v. Preston, 533
Kirksey v. Kirksey, 153
Krell v. Henry, 618
Kutzin v. Pirnie, 353
Kuzmeskus v. Pickup Motor Co., 54
Laclede Gas Co. v. Amoco Oil Co., 381
Landon v. Twentieth Century-Fox Film Corp., 478
Lawrence v. Fox, 647
Lee v. Joseph E. Seagram & Sons, Inc., 438
Leeber v. Deltona Corp., 362
Lefkowitz v. Great Minneapolis Surplus Store, 41
Lenawee County Board of Health v. Messerly, 206
Livingstone v. Evans, 78
Lucy v. Zehmer, 23
Luria Bros. & Co., Inc. v. Piolet Bros. Scrap Iron & Metal, Inc., 442
Macke Co. v. Pizza of Gaithersburg, Inc., 691

- Martinez v. Socoma Companies, 662
Masterson v. Sine, 433
Mattei v. Hopper, 525
Mills v. Wyman, 112
MindGames, Inc. v. Western Publishing Co., Inc., 316
Mineral Park Land Co. v. Howard, 612
Mitchill v. Lath, 428
Morris v. Morris, 448
Mutual Life Ins. Co. of New York v. Johnson, 615
National Ass'n of Postmasters of U.S. v. Hyatt Regency Washington, 605
Neri v. Retail Marine Corp., 268
Odorizzi v. Bloomfield School District, 224
Omni Group, Inc. v. Seattle-First National Bank, 139
Oppenheimer v. Oppenheim, 510
Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co., 454
Parker v. Twentieth Century-Fox Film Corp., 291
Pederson v. McGuire, 522
Peevyhouse v. Garland Coal & Mining Co., 277
Pettersen v. Pattberg, 66
Plante v. Jacobs, 547
Price v. Van Lint, 535
Prousi v. Cruisers Div. of KCS Intern., Inc., 565
Prutch v. Ford Motor Co., 311
Raffles v. Wichelhaus, 485
Reimer v. Badger Wholesale Co., Inc., 325
Ricketts v. Scothorn, 154
Robson v. Robson, 671
Rockingham County v. Luten Bridge Co., 284
Rouse v. United States, 678
Schnell v. Nell, 105
Seaver v. Ransom, 650
Sherwood v. Walker, 201
Shultz v. Los Angeles Dons, Inc., 562
Southern States Masonry v. J.A. Jones Construction, 515
Sterling v. Gregory, 552
Stewart v. Newbury, 543
Store Properties v. Neal, 47
Strong v. Sheffield, 137
Sullivan v. O'Connor, 328
Tacoma Northpark, LLC v. NW, LLC, 503
Taylor v. Caldwell, 601
Tipton v. Feitner, 554
Travellers Int'l, AG v. Trans World Airlines, Inc., 388
United States v. Algernon Blair, Inc., 346
United States v. Hayes, 366
Van Wagner Advertising Corp. v. S & M Enterprises et al., 384
Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd., 304
Wachter Management Co. v. Dexter & Chaney, Inc., 87
Wallace Real Estate Investment, Inc. v. Groves, 577
Williams v. Walker-Thomas Furniture Co., 241
Wilson Salvage Co. v. Hays, 271
Wood v. Boynton, 211
Wood v. Lucy, Lady Duff-Gordon, 143
Wood v. May, 232
Ziehen v. Smith, 541

Preface and Acknowledgments

By our count, there are at least 20 other contracts casebooks out there. And legal publishers offer a wide variety of casebook series. Why write another casebook? Why create a new casebook series?

Because legal education can and must improve.

For years, law professors have complained that, no matter how hard they tried to be effective educators, their students' performance fell short of their goals. In 2000, the editor of this series, Professor Michael Hunter Schwartz, took a community college class in learning theory and instructional design. It changed his whole outlook on legal education. He learned there are better ways to teach what we wanted our students to learn.

In the meantime, a series of studies found that, while law students come to law school with the same levels of depression, anxiety and substance abuse as their graduate and professional school peers, by the end of their first year, law students are more depressed and more anxious and abuse substances at a greater rate.¹

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors are like members of fraternities or sororities who, having been through an initiation process that included hazing, continue hazing all new initiates. Professors often think, "If it was good enough for me, it should be good enough for my students." In this way, legal education is disturbingly similar to the fraternity paddling rituals depicted in the movies.

In Spring 2007, the Carnegie Foundation's EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW² and Roy Stuckey's BEST PRACTICES FOR LEGAL EDUCATION³ measured the effectiveness of modern legal education and concluded that legal education, as presently practiced, falls quite short of what it can and should be. Both works severely criticize the rigid adherence to a single teaching technique and the absence of law practice and professional identity development in legal education.

Inspired by the call to action reflected in these works and by the absence of teaching materials designed in light of these studies and of the hundreds of educational studies in the instructional design field, law teaching experts from around the country have gathered as a group and envisioned a casebook series responsive to the research on teaching and learning and to the Carnegie and Stuckey studies. The result is this series. We hope

1. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 J. PERSONALITY & SOC. PSYCHOL. 883 (2007).

2. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, ED-UCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

3. Roy Stuckey & Others, BEST PRACTICES FOR LEGAL EDUCATION (2007).

this book and the series serve as tools to allow law professors and their students to work together to improve students' learning, reduce students' stress, and better prepare students for the rigors and joys of practicing law.

Overview and Structure of This Text

You will notice from the outset that this text, like all the books in the Context and Practice Casebook series, is unlike other law school texts in significant ways. Whereas most law school texts consist mostly of cases with some textual materials and problems thrown in, this text provides a different mix of cases and contextual material, plus thousands of problems.

This text also uses cases in a very different way from traditional law school texts. Most law school texts provide little to no background knowledge and require you to derive rules of law from cases in a way that is very different from how practicing lawyers do so. When they can, practicing lawyers read secondary resources summarizing an area of law before they start reading the cases. That background provides lawyers with a context for understanding the cases. In contrast to traditional model casebooks, this text provides students with the background knowledge a practicing lawyer would develop before considering reading the cases.

Unlike other texts, this casebook has been designed to give students the tools they need to understand the law and the cases. The book guides students through activities that will make it more likely they will remember what they have learned. For example, the book focuses extensively on helping students learn to use rules, to apply rules and cases to analyze legal problems.

In addition, this text provides many exercises to help students build law learning skills as they study contract law. All contract law professors agree that they cannot possibly teach their students every rule of contract law. So, every contract law professor tries to cover the most important aspects of contract law while also hoping students somehow develop a more general skill for learning contract law. This book has been explicitly designed to train contracts students to become expert at learning in the field. In fact, we hope the text becomes a more general resource for students. Students who internalize the expert learning skills taught in this book will be able to use the skills to help them learn in their other law school courses and to become life-long, expert learners of the law.

By and large, law practice requires that lawyers be expert legal readers and writers. All existing casebooks make challenging reading demands on students. This casebook also emphasizes legal reading skills, and it probably places a greater emphasis on legal writing than most casebooks. In addition, the book provides learning experiences that allow students to make sense of what they are learning from a visual perspective, and learning experiences that are as close to authentic law practice as possible, experiences that allow students to see how practicing lawyers would use the concepts in practice.

The book is also carefully sequenced. Early in the book, the primary focus is on building basic lawyering and legal analysis skills, such as reading and understanding cases and statutes, identifying legal issues, applying rules, and applying and distinguishing cases. Consequently, the first few chapters provide substantial guidance in your development of these skills and, where appropriate, examples, hints and cues to help students succeed. As students proceed through the book, we gradually decrease the guidance and increase

the expectations. The last several chapters increasingly put students in the role of a lawyer who not only must understand and account for the application of somewhat indeterminate law to somewhat indeterminate facts but also must account for client interests and goals and the lawyers' professional responsibilities and values. In fact, the final chapter of the book, Chapter 15, focuses on helping you develop problem-solving skills, both in the context of the types of problems you are likely to encounter on your final exams and in the much more contextual, ambiguous and challenging problems contract lawyers handle. Chapter 15 reflects the research on learning that indicates that students learning in new fields learn best if they are taught both the trees (the individual concepts) in the forest (the field) and the how experts work in the forest (how experts combine and use the concepts to solve real-world problems).

Finally, you may notice that this text contemplates a higher level of class preparation and practice in solving problems than texts you have encountered in your past educational experiences. The upside for you is that if you do the work presented along the way, you will learn more effectively and will not need to study as much for your examinations.

Contracts Course Objectives

This book has been designed to help students develop skills and knowledge in four areas: (1) contract law and its application to legal problems; (2) expert learning skills applicable not only to learning contracts but also applicable to learning any body of law; (3) contract reading skills; and (4) the beginnings of contract drafting skills. The discussion below explains each of these skills and what you should be learning with respect to each.

Objectives Relating to Learning Contract Doctrine and its Application

By the end of your study of contract law, if you are given the facts and relevant documents that form the basis of a contract dispute, you will be able to analyze such “closed universe” problems:

1. Identify the contract law litigation or drafting issues implicated by the facts;
2. Know and articulate, at a mastery level, the relevant contract rules and the rationales that support those rules;
3. Develop arguments that reasonable lawyers representing all involved parties would make with respect to the litigation issues and draft contract terms addressing the drafting issues; and
4. Predict how a court would evaluate the arguments to resolve the litigation dispute or how a court would interpret the draft language were it ever disputed.

Objectives Relating to Expert Learning Skills

In addition, by the end of your study of contract law, you should have increased your level of independent, expert learning skills. Accordingly, you should be better able to self-

regulate your law school learning and know when and how to use the skills law students and lawyers need to succeed in law school, on the bar examination, and in practice.

Objectives Relating to Learning Contract Reading Skills

This text is not designed to help you become an expert in reading contracts, but it is designed to move you closer to that designation. That skill takes a few more years to develop. However, by the end of your study of contracts, if you are given a contract and asked to evaluate it, you should be able to:

1. Identify a wide variety of commonly-used clauses;
2. Evaluate the strengths and weaknesses of the particular versions of the commonly-used clauses;
3. Find ambiguities in both the language used in the commonly-used clauses and in the contract's other clauses; and
4. Evaluate the implications of the ambiguities in light of a set of client goals.

Objectives Relating to Learning Contract Drafting Skills

Finally, you will be familiar with and begin to develop contract drafting skills. This text also does not purport to make you a master draftsman. You can expect to learn to:

1. Describe how contracts lawyers think about and approach drafting problems;
2. Be able to use others' "form contracts" thoughtfully, actively and creatively; and
3. Be able to competently draft some contract clauses.

Some of the Underlying Objectives

To achieve the above goals, you will need to develop the following base-level knowledge and skills:

1. Knowledge of the principles of contract law;
2. Knowledge of basic contract drafting principles;
3. The skill of applying principles of contract law to facts;
4. Knowledge of the context within which each of the contract principles arises;
5. The skill of identifying and distinguishing among contract law issues;
6. Knowledge of common argument patterns in contract law analyses;
7. The skill of brainstorming and articulating arguments contract lawyers make;
8. The skill of organizing your thoughts; and
9. The skill of clearly, precisely, and concisely expressing your thoughts in writing.

Of course, hundreds of sub-sub-goals underlie each objective and sub-goal listed above.

Organization of This Text and of Each Chapter

We have structured this text into eight parts: an introduction; the six broad subjects in contract law (formation, defenses, interpretation, performance, third-party rights, and remedies for breach); and, an additional part that focuses on solving the types of problems that contract lawyers need to be able to analyze and solve. Each of the broad subject areas includes several subtopics, each of which is assigned its own chapter. For example, Part II, Contract Formation, includes three chapters: Chapter 2, Mutual Assent; Chapter 3, Consideration; and Chapter 4, Promissory Estoppel.

Each chapter follows a similar format. Each chapter starts with a problem you should be able to analyze and resolve by the end of your study of that chapter. For each new body of law, we summarize or otherwise introduce the law you will be learning and, in many instances, provide a simple example. In particular, in almost every instance, you will learn a rule from the text or from a secondary source that the text instructs you to consult, *before* you read cases in which courts have applied that rule. The chapters also include an overview so that you have a sense of how you will be learning what you need to learn.

The introductions are most often followed by a series of cases, with problems and active learning exercises interspersed throughout. Many of the cases in the first half of the book include commentary alongside designed to increase your understanding of the cases or to teach you something about legal method. Many of the problems and exercises suggest you write a response, and we encourage you to do so. In class, you can expect your professor will ask you many of the questions included in this text.

The chapters also include graphics designed to give you a visual sense of the concepts and the overall body of law. Toward the end of each chapter, we include hints for analyzing and solving the problem presented at the beginning of the chapter. Many chapters also ask you to find the law of the state in which you currently are planning to practice law. Finally, each chapter concludes with reflection questions designed to further your professional development.

Acknowledgments

Our spouses, Stacey and Mike, for supporting everything we do.

Our children, Kendra, Samantha, Hannah, and Elizabeth, for being the wonderful people they are.

Our research assistants, including: Kenneth DeLaughder, Kimberlee Keleher, Jumana Kelly, Jessica Kohl, Mike McClure, James Pavison, Sarah Peterson Herr, Ryan Prochaska, and Karin Tollefson.

All the wonderful, easy-to-work-with people at Carolina Academic Press, including Keith Sipe, Linda Lacy, Jennifer Gilchrist, and Tim Colton.