

CONTRACTS AND SALES:
CONTEMPORARY CASES
AND PROBLEMS

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CONTRACTS AND SALES: CONTEMPORARY CASES AND PROBLEMS

Third Edition

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MATTHEW  BENDER

PREFACE

This book is the third edition of a book previously entitled *Contracts and Sales: Cases and Problems*. We changed the title in the second edition to emphasize the fact that we have included many relatively recent cases. We still include some of the “old chestnuts” such as *Hamer v. Sidway* and *Hadley v. Baxendale*, but we think that students can relate better to the concepts of contract law if they are discussed in contemporary language and in contemporary settings (such as the “Pepsi Points” commercial discussed in *Leonard v. Pepsico, Inc.*). A couple of new problems have been added in the third edition that focus on cases that received a fair amount of media attention but which never resulted in officially reported court decisions (references are to where discussions of the cases can be obtained on the internet).

We have continued to emphasize Article 2 of the Uniform Commercial Code for the same reasons that we did so in the prior edition of the book: (1) because of the importance of sales of goods in economic life, (2) the influence which the UCC has had on the general law of contracts, and (3) to expose students to an important statute in order to supplement the case law typical of first-year courses. We have also included some material from the Convention on Contracts for the International Sale of Goods (taking the some of the suggestions of Professor Dodge from his article *Teaching the CISG in Contracts*, 50 J. of Legal Ed. 72 (2000)). As commerce becomes increasingly global, students should realize that the U.S. is not the only source of law governing commercial transactions.

As has been the case with the prior editions of this book, the cases are more heavily edited than in other casebooks. While there is something to be said for requiring the students to separate out what is relevant in a case, our approach facilitates coverage in focusing the students on the doctrine that is to be discussed. With schools reducing the number of units for required courses like Contracts, we think that our edited cases makes it easier to cover more material in fewer class hours.

We have used most of the materials in this book in our classrooms at one time or another. However, the book now contains more material that we can cover in the hours allotted to contracts in our schools. Instructors who proceed at the same pace will have to make some omissions if their course is of standard length. We believe that some of the material can be mastered by students without coverage in class.

The problems have generated good class discussions. At first, we feared that students might use the citation to “look up answers” rather than think about the issues raised, but this did not happen. We have shortened some of the problems to make them easier to cover.

The cases and law review articles in this book are edited. We have paraphrased some of the articles that were previously reproduced, again to facilitate coverage. In order not to encumber the page with dots, omissions have not been indicated, except in quotations from statutes and the Restatement of Contracts.

In this third edition, we have eliminated references to the 2003 proposed amendments to UCC Article 2 since they were removed by their sponsors in 2011. We make reference in a few places to a couple of new publications from the American Law Institute that may be influential on courts in upcoming years, namely the *Restatement (Third) of Restitution*

PREFACE

and Unjust Enrichment and the Principles of the Law of Software Contracts.

We think our organizational scheme “works” pedagogically. One slight change in the third edition is that we have moved the discussion of mutuality of obligation back to the chapter on consideration. However, it is certainly not the *only* way to arrange the subject. The instructor may pick and choose the topics that she or he may wish to present in any order that the instructor wishes.

We wish to express our appreciation to the members of the faculty support staff at UCLA and Loyola for their assistance in preparation of the manuscript. We also wish to thank numerous research assistants for their work in finding materials to include in the book and for their helpful ideas on how to improve its overall quality.

November 2012

William McGovern
Lary Lawrence
Bryan D. Hull

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Excerpts from the *Restatement of Property*, *Restatement of Security*, *Restatement (Second) of Torts*, *Restatement (Second) of Contracts* and the *Restatement (Third) of Restitution and Unjust Enrichment* are reprinted with permission of the American Law Institute. Copyright © 1936, 1941, 1965, 1981 and 2011, respectively, by The American Law Institute. All rights reserved. Excerpts from the Uniform Commercial Code are reprinted by permission of the Permanent Editorial Board for the Uniform Commercial Code. Copyright 2010 by the American Law Institute and National Conference of Commissioners on Uniform State Laws. All rights reserved.

TABLE OF CONTENTS

| | | |
|------------------|---|----------|
| Chapter 1 | INTRODUCTION | 1 |
| § 1.01 | MATERIALS IN THE BOOK | 1 |
| [A] | Cases | 1 |
| [B] | Statutes | 2 |
| [C] | Books and Law Review Articles | 4 |
| [D] | Restatements | 4 |
| [E] | Problems | 5 |
| § 1.02 | THE SCOPE OF CONTRACTS | 5 |
| § 1.03 | REMEDIES | 6 |
| § 1.04 | CONTRACT AND TORT | 7 |
| | | |
| Chapter 2 | BASIS FOR ENFORCEMENT OF PROMISES | 9 |
| § 2.01 | DEFINITION OF “CONTRACT” | 9 |
| § 2.02 | CONSIDERATION | 9 |
| [A] | The Requirement of a “Bargained For” Exchange | 9 |
| | <i>Hamer v. Sidway</i> | 10 |
| | Notes and Questions | 11 |
| | Problem A | 13 |
| | <i>Cash v. Benward</i> | 13 |
| | Questions | 15 |
| | Problem B | 15 |
| [B] | Illusory Promises and Implied Bargains | 16 |
| | <i>Cheek v. United Healthcare</i> | 16 |
| | Notes and Questions | 20 |
| | <i>Weiner v. McGraw-Hill, Inc.</i> | 21 |
| | Notes and Questions | 23 |
| | <i>Wood v. Lucy, Lady Duff-Gordon</i> | 24 |
| | Note and Questions | 25 |
| § 2.03 | PROMISES ENFORCEABLE WITHOUT CONSIDERATION | 26 |
| [A] | Promises Under Seal | 26 |
| | <i>Marine Contractors Co., Inc. v. Hurley</i> | 26 |
| | Notes and Questions | 28 |
| [B] | Past Consideration: Moral Obligation | 30 |
| | <i>Webb v. McGowin</i> | 30 |
| | Notes and Questions | 31 |
| | Problem C | 32 |
| | <i>In re Estate of Casey</i> | 33 |
| | Notes and Questions | 34 |

TABLE OF CONTENTS

| | | |
|----------------------|--|-----------|
| [C] | Promissory Estoppel | 34 |
| | <i>Ricketts v. Scothorn</i> | 34 |
| | Notes and Questions | 36 |
| | <i>Hayes v. Plantations Steel Company</i> | 39 |
| | Note and Questions | 43 |
| | Problem D | 44 |
| | Problem E | 44 |
| § 2.04 | IMPLIED IN LAW CONTRACTS (QUASI-CONTRACT) | 45 |
| | <i>Schott v. Westinghouse Electric Corporation</i> | 45 |
| | Notes and Questions | 49 |
| | Problem F | 50 |
| | Note and Question | 50 |
| | Problem G | 50 |
| | Note and Questions | 51 |
| | Note on Agency | 51 |
| | <i>Board of Public Works v. L. Cosby Bernard and Co.</i> | 52 |
| | Note and Questions | 54 |
| | <i>S. T. Grand, Inc. v. City of New York</i> | 54 |
| | Questions | 56 |
| Chapter 3 | | |
| | CONTRACT FORMATION: OFFER & ACCEPTANCE . | 57 |
| § 3.01 | THE OFFER | 57 |
| [A] | What Is an Offer? | 57 |
| | <i>Leonard v. Pepsico, Inc.</i> | 57 |
| | Notes and Questions | 64 |
| | Problem A | 65 |
| [B] | Revocation of Offer Prior to Acceptance | 65 |
| | <i>Allen R. Krauss Co. v. Fox</i> | 66 |
| | Notes and Questions | 67 |
| | Problem B | 68 |
| | <i>Drennan v. Star Paving Company</i> | 69 |
| | Notes and Questions | 71 |
| | <i>Newberger v. Rifkind</i> | 72 |
| | Notes and Questions | 74 |
| § 3.02 | THE ACCEPTANCE | 76 |
| [A] | Acceptance by Correspondence | 76 |
| | <i>Henthorn v. Fraser</i> | 76 |
| | Notes and Questions | 77 |
| | <i>Worms v. Burgess</i> | 78 |
| | Questions | 79 |
| [B] | Acceptance Inferred from Silence | 79 |

TABLE OF CONTENTS

| | | |
|------------------|---|------------|
| | <i>Curtis Co. v. Mason</i> | 79 |
| | Questions | 80 |
| [C] | Discrepancy Between Offer and Acceptance | 81 |
| | <i>Minneapolis & St. L. Ry. Co. v. Columbus Rollingmill Co.</i> | 81 |
| | Note and Questions | 83 |
| | Problem C | 84 |
| | <i>Brown Machine v. Hercules, Inc.</i> | 84 |
| | Notes and Questions | 89 |
| | <i>Ohio Grain Co. v. Swisshelm</i> | 90 |
| | Questions | 92 |
| | Problem D | 92 |
| | <i>ProCD, Inc. v. Zeidenberg</i> | 93 |
| | Notes and Questions | 98 |
| | Problem E | 99 |
| | | |
| Chapter 4 | MODIFICATIONS AND SETTLEMENT OF CLAIMS . . | 101 |
| <hr/> | | |
| § 4.01 | FURTHER APPLICATIONS OF THE CONSIDERATION DOCTRINE | 101 |
| § 4.02 | MODIFICATION OF AN AGREEMENT | 101 |
| | <i>Gilbert Steel Ltd. v. University Construction Ltd.</i> | 102 |
| | Questions | 103 |
| | <i>Austin Instrument, Inc. v. Loral Corp.</i> | 103 |
| | Questions | 106 |
| | Problem A | 106 |
| | Note on Drafting | 107 |
| § 4.03 | SETTLEMENT OF CLAIMS | 107 |
| | <i>Jole v. Bredbenner</i> | 107 |
| | Note and Questions | 109 |
| | <i>Mathis v. St. Alexis Hospital</i> | 110 |
| | Notes and Questions | 112 |
| | <i>Holley v. Holley</i> | 113 |
| | Notes and Questions | 117 |
| | Problem B | 117 |
| | Problem C | 117 |
| | | |
| Chapter 5 | EXPRESS AND IMPLIED PROMISES | 119 |
| <hr/> | | |
| § 5.01 | WORDS WHICH DO NOT CONSTITUTE PROMISES | 119 |
| [A] | Express Warranties or “Puffing”? | 120 |
| | <i>Payne v. Sunnyside Community Hospital</i> | 120 |
| | Notes and Questions | 124 |
| | <i>Abrams v. Illinois College of Podiatric Medicine</i> | 124 |

TABLE OF CONTENTS

| | | |
|--------|--|-----|
| | Notes and Question | 126 |
| | <i>Carpenter v. Chrysler Corporation</i> | 126 |
| | Notes and Questions | 129 |
| | <i>Scheirman v. Coulter</i> | 130 |
| | Problem A | 131 |
| [B] | Inchoate Agreements | 131 |
| | <i>Cottonwood Mall Company v. Sine</i> | 131 |
| | Notes and Questions | 133 |
| | <i>Berrey v. Jeffcoat</i> | 134 |
| | <i>Hoffman v. Red Owl Stores, Inc.</i> | 135 |
| | Notes and Questions | 140 |
| | <i>Dursteler v. Dursteler</i> | 141 |
| | Questions | 144 |
| | Problem B | 145 |
| § 5.02 | IMPLIED TERMS | 145 |
| [A] | Warranties of Quality in Sales of Goods | 145 |
| | <i>Vlases v. Montgomery Ward & Co.</i> | 146 |
| | Notes and Questions | 147 |
| | Problem C | 147 |
| | <i>Batiste v. American Home Products Corp.</i> | 147 |
| | Questions | 149 |
| [B] | The Obligation of Good Faith | 150 |
| [1] | When Does the Covenant of Good Faith Come into Play and What Does It Require? | 150 |
| | <i>Brewster of Lynchburg, Inc. v. Dial Corp.</i> | 150 |
| | Questions | 154 |
| | <i>Third Story Music v. Waits</i> | 154 |
| | Notes and Questions | 157 |
| [2] | Employment Contracts | 158 |
| | <i>Monge v. Beebe Rubber Co.</i> | 158 |
| | Notes and Questions | 160 |
| | <i>Murphy v. American Home Products Corp.</i> | 161 |
| | Note | 164 |
| | Problem D | 164 |
| | Notes and Questions | 164 |
| | Problem E | 165 |
| [3] | Franchise Agreements | 165 |
| | <i>William C. Cornitius, Inc. v. Wheeler</i> | 165 |
| | Note and Questions | 168 |
| [4] | Insurance | 170 |
| | <i>Gibson v. Western Fire Ins. Co.</i> | 170 |

TABLE OF CONTENTS

| | | |
|------------------|---|------------|
| Chapter 6 | THE STATUTE OF FRAUDS AND PAROL EVIDENCE | |
| | RULE | 173 |
| § 6.01 | THE STATUTE OF FRAUDS | 173 |
| [A] | The Statutory Texts | 173 |
| | Statute of Frauds | 173 |
| | Note | 174 |
| [B] | Purposes of the Statute | 174 |
| [C] | Coverage of the Statute | 175 |
| [1] | One Year Provision | 175 |
| | <i>Burton v. Atomic Workers Federal Credit Union</i> | 175 |
| | Notes and Questions | 178 |
| | Problem A | 178 |
| [2] | The Suretyship Provision | 179 |
| | <i>Power Entertainment v. National Football League Properties</i> . . . | 179 |
| | Notes | 181 |
| | Problem B | 181 |
| [3] | Agreements in Consideration of Marriage | 182 |
| [4] | Land Contracts | 182 |
| [D] | Type of Writing Required | 182 |
| | <i>Hoffman v. Sun Valley Co., Inc.</i> | 183 |
| | Notes and Questions | 185 |
| | <i>Bazak International Corp. v. Mast Industries, Inc.</i> | 186 |
| | Questions | 190 |
| [E] | Admissions | 191 |
| | <i>DF Activities Corporation v. Brown</i> | 191 |
| | Problem C | 194 |
| [F] | Part Performance and Action in Reliance | 195 |
| | <i>Jolley v. Clay</i> | 195 |
| | Notes | 197 |
| | Problem D | 197 |
| | Note and Question | 197 |
| | Problem E | 198 |
| | <i>Allied Grape Growers v. Bronco Wine Company</i> | 198 |
| | Notes and Questions | 200 |
| [G] | Oral Modifications | 201 |
| | <i>Wixon Jewelers, Inc. v. Di-Star, Ltd.</i> | 201 |
| | Questions | 202 |
| | <i>Wagner v. Graziano Construction Company</i> | 202 |
| | Questions | 203 |
| § 6.02 | THE PAROL EVIDENCE RULE | 204 |
| [A] | The Rule | 204 |

TABLE OF CONTENTS

| | | |
|--|--|------------|
| | <i>W.W.W. Associates, Inc. v. Giancontieri</i> | 205 |
| | Notes and Questions | 208 |
| [B] | Exceptions | 209 |
| [1] | Oral Conditions | 209 |
| | <i>Scott v. Wall</i> | 209 |
| | Question | 210 |
| [2] | Consistent Additional Terms & Ambiguity | 210 |
| | <i>Masterson v. Sine</i> | 210 |
| | Notes and Questions | 215 |
| | Problem F | 216 |
| [3] | Trade Usage and Course of Dealing | 216 |
| | <i>Columbia Nitrogen Corp. v. Royster Co.</i> | 216 |
| | Questions | 219 |
| [4] | Course of Performance | 220 |
| | <i>Bulley & Andrews, Inc. v. Symons Corp.</i> | 220 |
| | Question | 221 |
| [5] | Misrepresentation | 221 |
| | <i>Keller v. A.O. Smith Harvestore Products, Inc.</i> | 221 |
| | Notes and Questions | 224 |
| [6] | Reformation | 225 |
| | <i>Thompson v. Estate of Coffield</i> | 225 |
| | Note and Question | 227 |
| | Problem G | 227 |
| | <i>World of Sleep, Inc. v. Seidenfeld</i> | 228 |
| | Question | 229 |
| [7] | Standardized Agreements | 229 |
| | <i>Darner Motor Sales v. Universal Underwriters Ins. Co.</i> | 229 |
| | Notes and Questions | 236 |
| | Problem H | 237 |
| § 6.03 | MISUNDERSTANDING | 237 |
| | <i>Frigaliment Importing Co. v. B.N.S. Int'l Sales Corp.</i> | 238 |
| | Notes and Questions | 240 |
| | Problem I | 241 |
| Chapter 7 UNFAIR CONTRACTS | | 243 |
| Part One GENERAL PRINCIPLES OF INVALIDATION | | 243 |
| § 7.01 | INCAPACITY | 243 |
| | <i>Krasner v. Berk</i> | 244 |
| | Notes and Questions | 246 |
| | <i>Parrent v. Midway Toyota</i> | 246 |
| | Note on Guardianship | 248 |

TABLE OF CONTENTS

| | | |
|--------|---|-----|
| | Problem A | 248 |
| | Problem B | 249 |
| | Note on Executed Transactions | 249 |
| § 7.02 | FIDUCIARY RELATIONSHIP | 249 |
| | <i>Thomas v. Caldwell</i> | 250 |
| | Questions | 251 |
| | <i>Turner v. Guy</i> | 251 |
| | Note on Specific Restitution | 253 |
| § 7.03 | MISTAKE OF FACT | 253 |
| | <i>Reilly v. Richards</i> | 254 |
| | Notes and Questions | 256 |
| | <i>Woyma v. Ciolek</i> | 257 |
| | Notes and Questions | 259 |
| | <i>Donovan v. RRL Corporation</i> | 260 |
| | Notes and Questions | 265 |
| § 7.04 | PUBLIC POLICY | 266 |
| [A] | Contracts Limiting Liability for Tort | 266 |
| | <i>McCutcheon v. United Homes Corp.</i> | 267 |
| | Note and Questions | 268 |
| | <i>Jones v. Dressel</i> | 268 |
| | Questions | 272 |
| [B] | Prenuptial Agreements | 272 |
| | <i>In re Marriage of Pendleton</i> | 272 |
| | Notes and Questions | 276 |
| | <i>In re The Marriage of Bonds</i> | 277 |
| | Note and Questions | 285 |
| § 7.05 | ADHESION CONTRACTS AND UNCONSCIONABILITY | 286 |
| | <i>Weaver v. American Oil Co.</i> | 287 |
| | Note and Question | 289 |
| | Problem C | 289 |
| | <i>Graham v. Scissor-Tail, Inc.</i> | 290 |
| | Notes and Questions | 295 |
| | <i>Williams v. Walker-Thomas Furniture Co.</i> | 296 |
| | Notes and Questions | 298 |
| | <i>Patterson v. Walker-Thomas Furniture Co.</i> | 299 |
| | Question | 300 |
| | <i>Jones v. Star Credit Corp.</i> | 300 |
| | Notes and Questions | 302 |
| | Note on Home Solicitation Sales | 302 |
| | Note on Usury and “Truth In Lending” | 303 |
| | <i>Remco Enterprises, Inc. v. Houston</i> | 304 |

TABLE OF CONTENTS

| | | |
|------------------|---|------------|
| | Note and Question | 307 |
| | Problem D | 307 |
| Part Two | SPECIFIC PROBLEMS IN CONTRACTS FOR THE SALE OF GOODS | 308 |
| § 7.06 | DISCLAIMER OF WARRANTIES | 308 |
| | <i>Lumber Mutual Ins. Co. v. Clarklift of Detroit</i> | 309 |
| | Note | 312 |
| | Problem E | 312 |
| | <i>A & M Produce Co. v. Fmc Corp.</i> | 313 |
| | Notes and Questions | 316 |
| | Problem F | 316 |
| § 7.07 | LIMITATIONS OF REMEDY | 317 |
| | <i>Wille v. Southwestern Bell Telephone Co.</i> | 317 |
| | <i>Collins v. Uniroyal, Inc.</i> | 320 |
| | Note and Questions | 323 |
| Chapter 8 | RIGHT TO BARGAINED-FOR EXCHANGE | 325 |
| Part One | GENERAL LAW OF CONTRACT | 325 |
| § 8.01 | SPECIFIC PERFORMANCE | 325 |
| [A] | Inadequacy of Legal Remedy | 325 |
| | <i>Severson v. Elberon Elevator, Inc.</i> | 326 |
| | Notes and Questions | 327 |
| | Problem A | 330 |
| [B] | Construction and Employment Contracts | 330 |
| | <i>Petry v. Tanglwood Lakes, Inc.</i> | 331 |
| | <i>Goldblatt Bros., Inc. v. Addison Green Meadows, Inc.</i> | 334 |
| | Notes and Questions | 336 |
| | <i>Nassau Sports v. Peters</i> | 337 |
| | Note and Questions | 338 |
| | Problem B | 339 |
| | Note and Question | 339 |
| | <i>Rogers v. Runfola & Associates, Inc.</i> | 339 |
| | Notes and Questions | 342 |
| | Problem C | 343 |
| [C] | Equitable Defenses | 344 |
| | <i>Brandolino v. Lindsay</i> | 344 |
| | Questions | 345 |
| | <i>Schartz v. D R B & M Real Estate Partnership</i> | 345 |
| | Notes and Questions | 347 |
| | Problem D | 347 |
| § 8.02 | DAMAGES | 348 |

TABLE OF CONTENTS

| | | |
|-----|--|-----|
| [A] | Expectancy vs. Reliance and Restitution | 348 |
| | <i>Sullivan v. O'Connor</i> | 349 |
| | Notes and Questions | 352 |
| | <i>Gruber v. S-M News Co.</i> | 353 |
| | Questions | 355 |
| | <i>Booker v. Midpac Lumber Co. Ltd</i> | 355 |
| | Questions | 357 |
| | Note on Land Sales | 357 |
| | Problem E | 357 |
| [B] | Time of Measuring Value | 358 |
| | <i>Bachewicz v. American Nat. Bank & Trust Co.</i> | 358 |
| | Notes and Question | 360 |
| | <i>Cameron v. Benson</i> | 361 |
| | Problem F | 362 |
| [C] | Crediting the Defendant's Performance | 363 |
| | <i>Wolfberg v. Hunter</i> | 363 |
| | Problem G | 364 |
| [D] | The Right to Sue for Payments Not Yet Due | 365 |
| | <i>Greguhn v. Mutual of Omaha Insurance Co.</i> | 365 |
| | Notes and Questions | 367 |
| | <i>Reid v. Mutual of Omaha Insurance Company</i> | 368 |
| [E] | Limitations on Damage Recovery | 371 |
| [1] | Foreseeability; Certainty | 371 |
| | <i>Hadley v. Baxendale</i> | 372 |
| | Notes and Questions | 374 |
| | <i>Native Alaskan Reclamation and Pest Control, Inc. v. United</i> <i>Bank Alaska</i> | 375 |
| | Note | 378 |
| [2] | Mitigation of Damages; Avoidable Consequences | 379 |
| | <i>Reid v. Mutual of Omaha Insurance Company</i> | 380 |
| | Questions | 382 |
| | Problem H | 382 |
| | <i>George v. School District No. 8r</i> | 382 |
| | Notes and Questions | 385 |
| | Problem I | 386 |
| [3] | Economic Waste | 387 |
| | <i>County of Maricopa v. Walsh & Oberg Architects, Inc.</i> | 387 |
| | Notes and Questions | 389 |
| | Problem J | 390 |
| [F] | Tort vs. Contract: Emotional Disturbance and Punitive Damages | 391 |
| | <i>Fogleman v. Peruvian Associates</i> | 391 |

TABLE OF CONTENTS

| | | |
|--------|---|-----|
| | Notes and Questions | 392 |
| | Problem K | 393 |
| | <i>Z.D. Howard Company v. Cartwright</i> | 393 |
| | Notes and Questions | 394 |
| | Problem L | 395 |
| [G] | Liquidation of Damages Provisions | 396 |
| | <i>Ridgley v. Topa Thrift and Loan Association</i> | 396 |
| | Notes and Questions | 400 |
| | <i>Blank v. Borden</i> | 401 |
| | Notes and Questions | 402 |
| | <i>Gary Outdoor Advertising Co. v. Sun Lodge</i> | 403 |
| | Questions | 404 |
| | <i>Schrenko v. Regnante</i> | 404 |
| | Notes and Questions | 406 |
| | Problem M | 407 |
| | Problem N | 408 |
| | Part Two SALE OF GOODS — UNIFORM COMMERCIAL CODE | 409 |
| § 8.03 | BUYER’S REMEDIES | 410 |
| [A] | Specific Performance | 410 |
| | <i>Tower City Grain Co. v. Richman</i> | 410 |
| | Notes and Questions | 411 |
| | <i>Copylease Corp. of America v. Memorex Corp.</i> | 412 |
| | Question | 413 |
| [B] | Damages for Non-Delivery | 413 |
| | <i>Jon-T Farms, Inc. v. Goodpasture, Inc.</i> | 414 |
| | Notes and Questions | 415 |
| | <i>Oloffson v. Coomer</i> | 415 |
| | Questions | 418 |
| [C] | Damages for Breach of Warranty | 419 |
| | <i>Vista St. Clair, Inc. v. Landry’s Commercial Furnishings, Inc.</i> | 419 |
| | Notes and Questions | 421 |
| | Problem O | 422 |
| [D] | Consequential and Incidental Damages | 422 |
| | <i>Draft Systems, Inc. v. Rimar Manufacturing, Inc.</i> | 422 |
| | Problem P | 425 |
| | <i>S. J. Groves Sons Co. v. Warner Co.</i> | 426 |
| | Notes and Questions | 428 |
| | Problem Q | 428 |
| | <i>Johnson v. John Deere Co.</i> | 428 |
| | Question | 431 |
| § 8.04 | SELLER’S REMEDIES | 431 |

TABLE OF CONTENTS

| | | |
|------------------|--|------------|
| [A] | Resale vs. Market Price | 431 |
| | <i>B & R Textile Corporation v. Paul Rothman Industries Ltd.</i> | 431 |
| | Question | 432 |
| | Problem R | 432 |
| [B] | Lost Volume | 433 |
| | <i>Lake Erie Boat Sales, Inc. v. Johnson</i> | 433 |
| | Question | 435 |
| [C] | Action for the Price | 435 |
| | <i>Foxco Industries, Ltd. v. Fabric World, Inc.</i> | 436 |
| | Questions | 437 |
| | Problem S | 438 |
| | <i>F & P Builders v. Lowe's of Texas, Inc.</i> | 438 |
| | Note and Question | 439 |
| § 8.05 | LIQUIDATION OF DAMAGES | 439 |
| Chapter 9 | RIGHT TO TERMINATE OR RESCIND | 441 |
| Part One | GENERAL LAW OF CONTRACT | 441 |
| § 9.01 | TERMINATION, RESCISSION, SETOFF, AND SUSPENSION | 441 |
| [A] | Termination and Rescission | 441 |
| | <i>Woodruff v. McClellan</i> | 442 |
| | Questions | 443 |
| | <i>Aigner v. Cowell Sales Co.</i> | 443 |
| | Question | 444 |
| | Note on Election of Remedies | 445 |
| [B] | Dependent Promises vs. Independent Promises and Setoff | 447 |
| [C] | Suspension of Performance | 448 |
| | <i>Romig v. De Vallance</i> | 448 |
| | Questions | 449 |
| § 9.02 | WHEN CAN A PARTY TERMINATE OR RESCIND? | 450 |
| [A] | Express Conditions | 450 |
| | <i>Haymore v. Levinson</i> | 450 |
| | Notes and Questions | 452 |
| | <i>Ard Dr. Pepper Bottling Co. v. Dr. Pepper Co.</i> | 452 |
| | Question | 455 |
| | Problem A | 455 |
| | Note | 456 |
| | <i>Burger King Corp. v. Family Dining, Inc.</i> | 456 |
| | Notes and Questions | 460 |
| | Problem B | 462 |
| | Question | 462 |
| | <i>American Continental Life Ins. Co. v. Ranier Construction</i> | |

TABLE OF CONTENTS

| | | |
|--------|---|-----|
| | <i>Co., Inc.</i> | 462 |
| | Question | 465 |
| | Problem C | 465 |
| | Note | 466 |
| | <i>MacFadden v. Walker</i> | 466 |
| | Notes and Questions | 468 |
| | Problem D | 469 |
| [B] | Constructive Conditions, Material Breach | 470 |
| | <i>Jacob & Youngs v. Kent</i> | 471 |
| | Notes and Questions | 473 |
| | <i>Walker & Co. v. Harrison</i> | 473 |
| | Questions | 475 |
| | Problem E | 475 |
| [C] | Anticipatory Repudiation | 476 |
| | <i>Stonecipher v. Pillatsch</i> | 476 |
| | Note and Questions | 478 |
| | <i>Neves v. Wright</i> | 478 |
| | Questions | 479 |
| | <i>Taylor v. Johnston</i> | 480 |
| | Questions | 482 |
| | Problem F | 482 |
| § 9.03 | EFFECT OF RESCISSION AND RESTITUTION | 483 |
| | <i>Ennis v. Interstate Distributors, Inc.</i> | 483 |
| | Note on Rescission as Equitable Relief | 485 |
| | Question | 485 |
| | <i>Easterling v. Ferris</i> | 486 |
| | Note and Questions | 487 |
| | Problem G | 487 |
| | Note | 488 |
| [A] | Divisible Contracts | 488 |
| | <i>Siemans v. Thompson</i> | 489 |
| | Questions | 490 |
| | <i>Rudman v. Cowles Communication, Inc.</i> | 490 |
| | Questions | 493 |
| [B] | Delay as a Bar to Rescission | 493 |
| | <i>Snyder v. Rhoads</i> | 493 |
| | Questions | 495 |
| [C] | Breaching Party's Right to Restitution | 495 |
| | <i>Kutzin v. Pirnie</i> | 495 |
| | Notes and Questions | 498 |
| | Problem H | 499 |

TABLE OF CONTENTS

| | | |
|--------|--|------------|
| [D] | Innocent Party's Action for Restitution | 500 |
| | <i>Mobil Oil Production & Exploration Southeast, Inc. v. United States</i> | 500 |
| | Note and Questions | 501 |
| | Problem I | 501 |
| [E] | Breach of an Accord | 502 |
| | <i>Bradshaw v. Burningham</i> | 502 |
| | Part Two SALE OF GOODS — UNIFORM COMMERCIAL CODE | 504 |
| § 9.04 | BUYER'S REMEDIES | 504 |
| | Problem J | 504 |
| | Note | 505 |
| | <i>Zabriskie Chevrolet, Inc. v. Smith</i> | 505 |
| | Notes and Questions | 507 |
| | Problem K | 508 |
| | Problem L | 508 |
| | Problem M | 510 |
| | Note | 510 |
| | <i>Connecticut Investment Casting Corp. v. Made-Rite Tool Co.</i> | 511 |
| | Problem N | 513 |
| | <i>Bowen v. Young</i> | 513 |
| | Question | 514 |
| | <i>McCullough v. Bill Swad Chrysler-Plymouth, Inc.</i> | 514 |
| | <i>Hays Merchandise, Inc. v. Dewey</i> | 517 |
| | Questions | 518 |
| § 9.05 | SELLER'S REMEDIES | 518 |
| [A] | Before Delivery | 518 |
| | <i>Goldstein v. Stainless Processing Co.</i> | 519 |
| | Questions | 520 |
| | <i>Cherwell-Ralli, Inc. v. Rytman Grain Co., Inc.</i> | 520 |
| | Questions | 522 |
| | Problem O | 522 |
| [B] | After Delivery | 523 |
| | <i>Burk v. Emmick</i> | 524 |
| | Note | 525 |
| | Note on Secured Sellers | 525 |
| | <i>Brown v. Baker</i> | 526 |
| | Notes | 527 |
| | <i>Sheppard Federal Credit Union v. Palmer</i> | 528 |
| | Questions | 530 |
| | Problem P | 530 |

TABLE OF CONTENTS

| | | |
|-------------------|---|------------|
| Chapter 10 | IMPOSSIBILITY | 533 |
| § 10.01 | IMPOSSIBILITY AND IMPRACTICABILITY | 533 |
| | <i>Mishara Construction Co. v. Transit-Mixed Concrete Corp.</i> | 533 |
| | Notes and Questions | 534 |
| | <i>Sunflower Electric Co-op. v. Tomlinson Oil Co.</i> | 537 |
| | Questions | 541 |
| | Problem A | 541 |
| | Notes | 542 |
| | Problem B | 543 |
| § 10.02 | FRUSTRATION | 543 |
| | <i>Chase Precast Corp. v. John J. Paonessa Co., Inc.</i> | 544 |
| | Notes and Questions | 546 |
| | Problem C | 547 |
| | Problem D | 548 |
| § 10.03 | RISK OF LOSS | 549 |
| [A] | Loans and Bailment | 549 |
| | Note | 549 |
| | <i>Armour & Co., Inc. v. Rush Delivery Service, Inc.</i> | 549 |
| | Question | 550 |
| [B] | Leases | 550 |
| | <i>Washington Hydroculture, Inc. v. Payne</i> | 551 |
| | Question | 552 |
| | Problem E | 552 |
| [C] | Sales | 553 |
| | <i>Caudle v. Sherrard Motor Co.</i> | 553 |
| | Questions | 555 |
| | <i>Carlson v. Nelson</i> | 555 |
| | Problem F | 556 |
| | <i>Multiplastics, Inc. v. Arch Industries, Inc.</i> | 557 |
| | Problem G | 558 |
| Chapter 11 | THIRD PARTIES | 561 |
| § 11.01 | THIRD-PARTY BENEFICIARIES | 561 |
| [A] | Intended and Incidental Beneficiaries | 561 |
| [1] | Common Law | 561 |
| | <i>Exercycle of Michigan, Inc. v. Wayson</i> | 561 |
| | Questions | 562 |
| | <i>Uhl v. City of Sioux City</i> | 562 |
| | Notes and Questions | 564 |
| [2] | Uniform Commercial Code | 566 |
| | <i>Berry v. G. D. Searle & Co.</i> | 566 |

TABLE OF CONTENTS

| | | |
|---------|--|-----|
| | Questions | 567 |
| | <i>Professional Lens Plan v. Polaris Leasing Corp.</i> | 567 |
| | Questions | 569 |
| | Problem A | 570 |
| [B] | Defenses Assertable in Suit by Beneficiary | 570 |
| | <i>Mertens v. Coffman</i> | 570 |
| | Questions | 572 |
| | <i>Lewis v. Benedict Coal Corp.</i> | 572 |
| | Questions | 574 |
| | <i>Board of Education v. Village of Hoffman Estates</i> | 575 |
| | Questions | 577 |
| § 11.02 | ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES | 577 |
| [A] | Assignability | 577 |
| | <i>Macke Co. v. Pizza of Gaithersburg, Inc.</i> | 577 |
| | Question | 579 |
| | <i>Evening News Associations v. Peterson</i> | 579 |
| | Questions | 581 |
| | <i>FinanceAmerica v. Harvey E. Hall, Inc.</i> | 581 |
| | Questions | 583 |
| | Problem B | 583 |
| | <i>Cheney v. Jemmett</i> | 584 |
| | Notes and Questions | 587 |
| [B] | Defenses Against Assignee | 588 |
| [1] | Set Off of Unrelated Claims | 588 |
| | <i>Seattle-First Nat'l Bank v. Oregon Pacific Indus., Inc.</i> | 588 |
| | Questions | 589 |
| [2] | Defenses Under the Same Contract | 589 |
| | <i>First Investment Co. v. Andersen</i> | 589 |
| | Note on Negotiability | 591 |
| | <i>Stenger Industries v. Eaton Corp.</i> | 591 |
| | Question | 592 |
| | <i>Fairfield Credit Corp. v. Donnelly</i> | 592 |
| | Note on Consumer Transactions | 594 |
| | Notes and Question | 595 |
| [C] | Liability of Assignor to Assignee | 595 |
| | <i>Lonsdale v. Chesterfield</i> | 595 |
| | Questions | 596 |
| [D] | Assignor's Liability to Promisee | 596 |
| | <i>Downing v. Dial</i> | 597 |
| | Questions | 599 |
| [E] | Liability of Assignee | 599 |

TABLE OF CONTENTS

Cuchine v. H.O. Bell, Inc. 599
Rose v. Vulcan Materials Co. 601
Question 603
Davey v. Nesson 604
Highland View Nursing Homes v. Totalcare, Inc. 606
Question 607
Problem C 607

TABLE OF CASES **TC-1**

INDEX **I-1**
