CONTRACTS AND SALES: CONTEMPORARY CASES AND PROBLEMS

CONTRACTS AND SALES: CONTEMPORARY CASES AND PROBLEMS

Third Edition

2013

SELECTED RULES OF CONTRACT LAW

The Late William McGovern

1935-2018

Lary Lawrence

Professor of Law Harriet L. Bradley Chair in Contract Law Loyola Law School, Los Angeles

Bryan D. Hull

Professor of Law Loyola Law School, Los Angeles



Copyright © 2016 Carolina Academic Press, LLC All Rights Reserved

ISBN: 978-0-7698-6420-4

Carolina Academic Press, LLC 700 Kent Street Durham, NC 27701 Telephone (919) 489-7486 Fax (919) 493-5668 www.caplaw.com

Printed in the United States of America 2019 Printing

EDITORS' NOTE

This statutory supplement contains certain rules of contract law that are cited in the casebook Contemporary Contract Law—Cases and Problems, Third Edition. We have generally not included rules that are either reproduced or described in the casebook and the casebook generally does not reproduce or describe the rules that are contained in this statutory supplement. When the casebook directs the student to either a rule from the Uniform Commercial Code, the Restatement (Second) of Contracts or the Convention on Contracts for the International Sale of Goods (CISG), the student should look in this supplement.

The selections from the Uniform Commercial Code included in this supplement are from the official text in place at the time of this writing (2012). The sections from Article 1 are thus from the 2001 and 2008 revised versions of Article 1.

ACKNOWLEDGMENTS

Excerpts from the *Restatement (Second) of Contracts* are reprinted with permission of the American Law Institute. Copyright © 1981 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

	RACTS	
Chapter	2: Formation of Contracts: Parties & Capacity	1
§ 12	Capacity to Contract	1
§ 14	Infants	1
§ 15	Mental Illness or Defect	2
§ 16	Intoxicated Persons	2
Chapter	3: Formation of Contracts: Mutual Assent	2
§ 20	Effect of Misunderstanding	2
§ 26	Preliminary Negotiations	3
§ 27	Existence of Contract Where Written Memorial Is Contemplated	4
§ 32	Invitation of Promise or Performance	4
§ 37	Termination of Power of Acceptance Under Option Contract	4
§ 39	Counter-Offers	4
§ 40	Time When Rejection or Counter-Offer Terminates the Power of Acceptance	5
§ 41	Lapse of Time	5
§ 42	Revocation by Communication From Offeror Received by Offeree	
§ 43	Indirect Communication of Revocation	
§ 45	Option Contract Created by Part Performance or Tender	5
§ 48	Death or Incapacity of Offeror or Offeree	6
§ 50	Acceptance of Offer Defined; Acceptance by Performance; Acceptance by	
	Promise	6
§ 61	Acceptance Which Requests Change of Terms	7
§ 62	Effect of Performance by Offeree Where Offer Invites Either Performance or Promise	7
§ 63	Time When Acceptance Takes Effect	7
§ 64	Acceptance by Telephone or Teletype	7
§ 69	Acceptance by Silence or Exercise of Dominion	
Chapter	4: Formation of Contracts: Consideration	9
§ 71	Requirement of Exchange; Types of Exchange	9
§ 73	Performance of Legal Duty	9
§ 77	Illusory and Alternative Promises	10
§ 79	Adequacy of Consideration: Mutuality of Obligation	10

TABLE	OF CONTENTS	
§ 82	Promise to Pay Indebtedness; Effect on the Statute of Limitations	10
§ 84	Promise to Perform a Duty in Spite of Non-Occurrence of a Condition	11
§ 86	Promise for Benefit Received	11
§ 87	Option Contract	13
§ 89	Modification of Executory Contract	
§ 90	Promise Reasonably Inducing Action or Forbearance	14
Chapter	5: The Statute of Frauds	18
§ 124	Contract Made Upon Consideration of Marriage	18
§ 125	Contract to Transfer, Buy, or Pay for an Interest in Land	18
§ 129	Action in Reliance; Specific Performance	19
§ 130	Contract Not to Be Performed Within a Year	19
§ 131	General Requirements of a Memorandum	20
§ 132	Several Writings	20
§ 133	Memorandum Not Made as Such	20
§ 135	Who Must Sign	20
§ 137	Loss or Destruction of a Memorandum	20
§ 139	Enforcement by Virtue of Action in Reliance	21
§ 148	Rescission by Oral Agreement	21
§ 149	Oral Modification	21
§ 150	Reliance on Oral Modification	21
Chapter	6: Mistake	21
§ 152	When Mistake of Both Parties Makes a Contract Voidable	21
§ 153	When Mistake of One Party Makes a Contract Voidable	23
§ 154	When a Party Bears the Risk of a Mistake	23
§ 155	When Mistake of Both Parties as to Written Expression Justifies	
	Reformation	
§ 157	Effect of Fault of Party Seeking Relief	23
§ 158	Relief Including Restitution	24
Chapter '	7: Misrepresentation, Duress, and Undue Influence	24
§ 163	When a Misrepresentation Prevents Formation of a Contract	24
§ 164	When a Misrepresentation Makes a Contract Voidable	24
§ 168	Reliance on Assertions of Opinion	24
§ 169	When Reliance on an Assertion of Opinion Is Not Justified	24
§ 173	When Abuse of a Fiduciary Relation Makes a Contract Voidable	25
§ 175	When Duress by Threat Makes a Contract Voidable	25
8 176	When a Threat Is Improper	25

TABLE OF CONTENTS

Chapter	8: Unenforceability on Grounds of Public Policy	26
§ 188	Ancillary Restraints on Competition	26
§ 195	Term Exempting From Liability for Harm Caused Intentionally, Recklessly or Negligently	
§ 196	Term Exempting From Consequences of Misrepresentation	
§ 190 § 197	Restitution Generally Unavailable	
3 177	residuation denorally characters	
Chapter	9: The Scope of Contractual Obligations	28
§ 205	Duty of Good Faith and Fair Dealing	28
§ 208	Unconscionable Contract or Term	28
§ 209	Integrated Agreements	28
§ 210	Completely and Partially Integrated Agreements	29
§ 211	Standardized Agreements	29
§ 214	Evidence of Prior or Contemporaneous Agreements and Negotiations	29
§ 216	Consistent Additional Terms	30
§ 217	Integrated Agreement Subject to Oral Requirement of a Condition	30
§ 226	How an Event May Be Made a Condition	31
§ 227	Standards of Preference with Regard to Conditions	31
§ 228	Satisfaction of the Obligor as a Condition	32
§ 229	Excuse of a Condition to Avoid Forfeiture	32
Chapter	10: Performance and Non-Performance	32
§ 234	Order of Performances	32
§ 236	Claims for Damages for Total and for Partial Breach	32
§ 237	Effect on Other Party's Duties of a Failure to Render Performance	33
§ 240	Part Performances as Agreed Equivalents	33
§ 241	Circumstances Significant in Determining Whether a Failure Is Material	33
§ 243	Effect of a Breach by Non-Performance As Giving Rise to a Claim for	
	Damages for Total Breach	34
§ 250	When a Statement or an Act is a Repudiation	
§ 251	When a Failure to Give Assurance May Be Treated as a Repudiation	
§ 253	Effect of a Repudiation as a Breach and on Other Party's Duties	
§ 256	Nullification of Repudiation or Basis for Repudiation	35
Chapter	11: Impracticability of Performance and Frustration of Purpose	35
§ 261	Discharge by Supervening Impracticability	35
§ 263	Destruction, Deterioration or Failure to Come Into Existence of Thing Necessary for Performance	35
§ 265	Discharge by Supervening Frustration	36

TABLE	E OF CONTENTS	
§ 266	Existing Impracticability or Frustration	36
§ 279	Substituted Contract	36
§ 283	Agreement of Rescission	36
Ü		
Chapter	14: Contract Beneficiaries	37
§ 302	Intended and Incidental Beneficiaries	37
§ 309	Defenses Against Beneficiary	37
Chapter	15: Assignment and Delegation	37
§ 318	Delegation of Performance of Duty	37
§ 321	Assignment of Future Rights	38
§ 328	Interpretation of Words of Assignment; Effect of Acceptance of	
	Assignment	38
§ 332	Revocability of Gratuitous Assignments	38
§ 333	Warranties of an Assignor	39
§ 336	Defenses Against an Assignee	40
§ 338	Discharge of an Obligor After Assignment	40
Chapter	16: Remedies	41
§ 346	Availability of Damages	41
§ 347	Measure of Damages in General	43
§ 348	Alternatives to Loss in Value of Performance	43
§ 349	Damages Based on Reliance Interest	43
§ 350	Avoidability as a Limitation on Damages	43
§ 351	Unforeseeability and Related Limitations on Damages	44
§ 352	Uncertainty as a Limitation on Damages	45
§ 353	Loss Due to Emotional Disturbance	45
§ 354	Interest as Damages	46
§ 355	Punitive Damages	46
§ 356	Liquidated Damages and Penalties	46
§ 357	Availability of Specific Performance and Injunction	46
§ 359	Effect of Adequacy of Damages	46
§ 360	Factors Affecting Adequacy of Damages	47
§ 361	Effect of Provision for Liquidated Damages	48
§ 362	Effect of Uncertainty of Terms	48
§ 363	Effect of Insecurity as to the Agreed Exchange	49
§ 364	Effect of Unfairness	49
§ 365	Effect of Public Policy	50
§ 366	Effect of Difficulty in Enforcement or Supervision	50
8 367	Contracts for Personal Service or Supervision	50

TABLE	E OF CONTENTS	
§ 373	Restitution When Other Party Is in Breach	51
§ 374	Restitution in Favor of Party in Breach	
§ 375	· · · · · · · · · · · · · · · · · · ·	54
§ 376	Restitution When Contract is Voidable	54
§ 377	Restitution in Cases of Impracticability, Frustration, Non-Occurrence of	
Ü	* *	55
§ 378	Election Among Remedies	55
§ 380	Loss of Power of Avoidance by Affirmance	55
§ 381	Loss of Power of Avoidance by Delay	55
§ 382	Loss of Power to Affirm by Prior Avoidance	56
§ 384	Requirement That Party Seeking Restitution Return Benefit	56
COM	CTIONS FROM THE UNIFORM MERCIAL CODE (Official Text as of 2012, ling 2001 and 2008 Revised Edition of Article 1)	58
Article 1	: General Provisions	58
§ 1-103.	Construction of [Act] To Promote Its Purposes and Policies; Applicability of Supplemental Principles of Law.	58
§ 1-201.	General Definitions.	58
§ 1-303.	Course of Performance, Course of Dealing, and Usage of Trade	62
§ 1-304.	Obligation of Good Faith	63
§ 1-305.	Remedies To Be Liberally Administered	63
§ 1-306.	Waiver or Renunciation of Claim or Right After Breach.	63
§ 1-308.		64
§ 1-309.	Option To Accelerate at Will	64
Article 2	: Sales	64
§ 2-102.		_
g 2-102.	Article	64
§ 2-103.		64
§ 2-104.		65
§ 2-105.	Definitions: Transferability; "Goods"; "Future" Goods; "Lot";	
Ü	•	66
§ 2-106.	Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation"	66
§ 2-107.	Goods to Be Severed From Realty: Recording	67
§ 2-201.	Formal Requirements; Statute of Frauds	67
§ 2-202.	Final Written Expression: Parol or Extrinsic Evidence	68
§ 2-204.	Formation in General	69
§ 2-205.	Firm Offers	69
§ 2-206.	Offer and Acceptance in Formation of Contract	69

TABLE OF CONTENTS Additional Terms in Acceptance or Confirmation. 69 § 2-208. § 2-209. 71 § 2-210. § 2-302. Open Price Term. § 2-305. 75 § 2-306. Absence of Specific Time Provisions; Notice of Termination. 77 § 2-309. Open Time for Payment or Running of Credit; Authority to Ship Under § 2-310. Warranty of Title and Against Infringement; Buyer's Obligation Against § 2-312. Express Warranties by Affirmation, Promise, Description, Sample. 78 § 2-313. § 2-314. § 2-315. § 2-316. § 2-318. F.O.B. and F.A.S. Terms. § 2-319: § 2-328. 83 Passing of Title; Reservation for Security; Limited Application of This § 2-401. 83 Insurable Interest in Goods: Manner of Identification of Goods. § 2-501. § 2-502. § 2-507. § 2-508. Cure by Seller of Improper Tender or Delivery; Replacement. § 2-509. 86 § 2-510. 87 § 2-511. § 2-601. § 2-602. § 2-604. Buyer's Options as to Salvage of Rightfully Rejected Goods. § 2-605. § 2-606. § 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable 89 § 2-608. § 2-609. § 2-610. § 2-612. § 2-613. 94 94

TABLE	OF CONTENTS	
§ 2-702.	Seller's Remedies on Discovery of Buyer's Insolvency	95
§ 2-703.	Seller's Remedies in General	95
§ 2-704.	Seller's Right to Identify Goods to the Contract Notwithstanding Breach	
	or to Salvage Unfinished Goods	95
§ 2-706.	Seller's Resale Including Contract for Resale	96
§ 2-708.	Seller's Damages for Non-acceptance or Repudiation	96
§ 2-709.	Action for the Price	97
§ 2-710.	Seller's Incidental Damages.	97
§ 2-711.	Buyer's Remedies in General; Buyer's Security Interest in Rejected	
	Goods	97
§ 2-712.	"Cover"; Buyer's Procurement of Substitute Goods	98
§ 2-713.	Buyer's Damages for Non-delivery or Repudiation	98
§ 2-714.	Buyer's Damages for Breach in Regard to Accepted Goods	98
§ 2-715.	Buyer's Incidental and Consequential Damages	98
§ 2-716.	Buyer's Right to Specific Performance or Replevin	99
§ 2-717.	Deduction of Damages From the Price	99
§ 2-718.	Liquidation or Limitation of Damages; Deposits	99
§ 2-719.	· · · · · · · · · · · · · · · · · · ·	100
§ 2-720.	Effect of "Cancellation" or "Rescission" on Claims for Antecedent	100
8 2 722		100
§ 2-723.		100
§ 2-725.	Statute of Limitations in Contracts for Sale	101
Revised A	Article 3: Negotiable Instruments	101
§ 3-103.	Definitions	101
§ 3-114.	Contradictory Terms of Instrument	101
§ 3-311.	Accord and Satisfaction by Use of Instrument	101
Article 7:	Warehouse Receipts, Bills of Lading & Other Documents of Title	106
§ 7-204.	Duty of Care	106
§ 7-309.	Duty of Care; Contractual Limitation of Liability	106
Revised A	Article 9: Secured Transactions	107
§ 9-403.	Agreement Not to Assert Defenses Against Assignee	107
§ 9-404.	Rights Acquired by Assignee; Claims and Defenses Against Assignee	108
§ 9-405.		108
§ 9-406.	Discharge of Account Debtor; Notification of Assignment; Identification	
	and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.	109

TABLE OF CONTENTS

SELEC	IC	N	IS	5 1	Ŧ	(VI	7	ľ	1	\mathbf{E}	U		11	T	E)	N	A	L	Ι	0	N	IS	5						
CONV	EN	I	I	O	N	C	N	1	C	O	N	T	ŀ	RA	(\mathbb{C}^r	$\mathbf{\Gamma}_{i}$	S	F	•	H	?	T	H	I	$\overline{\mathbf{C}}$							
INTER	N	4	ΓΙ	C	N	ΙA	I	. 5	SA	\]		E	C	F	1	G	O	()]	D	S	((CI	S	G)					•	11	1
Article 1.																													 			11	1
Article 2.																													 			11	1
Article 3.																													 			11	1
Article 6.																													 			11	1
Article 8.																													 			11	1
Article 11																													 			11	2
Article 12																													 			11	2
Article 16																													 			11	2
Article 18																													 			11	2
Article 19																													 			11	3
Article 25																													 			11	3
Article 46																													 			11	3
Article 47																													 			11	3
Article 48																													 			11	4
Article 49																													 			11	4
Article 50																													 			11.	5
Article 62																													 			11.	5
Article 63																													 			11	5
Article 64																													 			11.	5