

Contracts

Contracts

Cases, Text, and Problems

SECOND EDITION

Charles Calleros

PROFESSOR OF LAW

SANDRA DAY O'CONNOR COLLEGE OF LAW

ARIZONA STATE UNIVERSITY

Chapters 1–12 and Appendices

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PROFESSOR EMERITUS

RETIRED JUDGE, ARIZONA SUPERIOR COURT

Chapters 13 and 14



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN: 978-1-5310-1760-6
eISBN: 978-1-5310-1761-3
LCCN: 2019950625

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

Printed in the United States of America

In loving memory of my parents, Charles and Emily Calleros
—Charles Calleros

To my “Dodi Li” for her love and support.
—Stephen A. Gerst

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Preface

I. Pedagogy for this Course

This book is designed for use in a course that employs both case analysis and the “problem method.” It combines the following features and approaches: text, cases, and problems.

A. Text

In the practice of law, new attorneys are seldom experts in all the laws that apply to their clients’ problems. If they immediately waded into the latest judicial decision in the field, they might not fully understand the decision or appreciate the significance of that decision within the larger field of law. To secure a general familiarity with the general topic, so that they can identify issues and develop an effective research strategy, new attorneys typically turn first to a secondary source, such as a treatise or law review article, which will provide basic background information about a field of law and will refer to the most important statutes and judicial decisions. Armed with this general background knowledge, an attorney can then more effectively research and understand the latest law on point in the relevant jurisdiction and can more easily identify issues raised by the facts of a client’s case.

To mirror this experience in the practice of law, and to save time for problem-solving, this book presents more text and somewhat fewer judicial opinions than most casebooks of its size. On most topics, statutes and judicial opinions are introduced with text that provides background information. At times, this background text consists of the author’s summary of one or more judicial opinions, so that you can spend somewhat less time briefing cases and can spend more time applying the lessons of the cases to new facts. Don’t worry; in light of the hundreds of judicial opinions presented in this book and in other first-year courses, you will be presented with seemingly innumerable opportunities to engage in case analysis.

Other text consists of excerpts from books or articles, providing perspective on the topics. These readings typically follow the cases and statutes on a topic, providing historical background, comparisons to approaches in other legal systems, or ideas for reform or innovation within our own legal system.

Chapter 1 is exceptional in its exclusive use of text to provide an overview of sources of contract law, followed by an introduction to some critical concepts through text and problems. That background reading should provide students with the tools needed to dive deeply into the topic of contract formation, explored in Chapters 2–7.

B. Casebook

Like traditional casebooks, this book presents many judicial opinions, most of them developing common law and a few interpreting and applying statutory law. These provide you with repeated opportunities to: (a) learn to read and interpret cases, (b) gain a deep understanding of how judges decide cases and develop the law, and (c) derive legal rules and standards from individual cases and from your synthesis of a series of cases. A few of the opinions are not binding on any court in other cases because they are issued by a trial court, are unpublished, or both; even these opinions, however, tell helpful stories about contracts, conflict, and judicial resolution of conflict.

C. Problem Method

You will fully comprehend the material only if you actively work with the legal principles by applying them to new facts. The many exercises and practice exams scattered throughout the book provide ample opportunity to engage in this analytic process before, during, and after class.

D. Statutory Analysis

This book presents important provisions of Articles 1 and 2 of the Uniform Commercial Code, primarily as enacted by Arizona, California, and Texas, as well as brief references to other statutes. Although several judicial interpretations of statutes are presented, this book frequently explores statutory analysis through the problem method, so that you can experience the intellectual challenge of engaging in original statutory application in light of the text and purpose of the statutes, under the guidance of your professor.

II. Preparing for Class and for Exams

Each professor will have his or her own expectations for class discussion, and you should seek to understand and meet those expectations. In the meantime, the following general guidance might be helpful.

A. Briefing Cases for Class

It's not a tired cliché: You will develop the skills of reading, interpretation, and analysis necessary for lawyering and for success on law school essay exams only if you perform the work of preparing your own case briefs.

If you are fortunate, one or more of your courses will address techniques of briefing cases. Various formats for case briefs might differ in the names assigned to elements of the case brief, or the order in which they are presented, but they do not vary greatly in substance. Following is one reasonable format for a case brief:

1. Identification of the Case

State the case name and authoring court. Identify the context of the case within the casebook: Consult the latest section heading in the book and identify the current topic of study. After you have analyzed the case, identify the role the case plays in the section or chapter.

2. Facts

Summarize the facts that led to the legal dispute. Tell the story in your own words, so that the case comes to life for you, and so that you can summarize the case in class without simply reading from the opinion.

3. Procedural History

Summarize the judicial proceedings in the courts below the court that authored the opinion. At the least, state the disposition of the issue or issues in the lower court or courts.

4. Issue(s) and Holding(s)

State the question or questions addressed by the court, followed by the court's conclusion on each question. Try to state the issue narrowly, incorporating critical facts into the question, so that your holding is grounded in those critical facts.

5. Reasoning

Explain the court's reasons for its conclusions. Among other things, this can include the court's analysis of the law and facts, and its balancing of policy considerations. Note how the court analogizes or distinguishes previous decisions that arguably are controlling or persuasive.

6. Evaluation

Explain your agreement or disagreement with the court's conclusions and reasoning. Feel free to be critical.

7. Synthesis

Explain how this opinion's holding and reasoning compare to those of other assigned opinions that address the same issue.

B. Additional Reading

1. Citations in the Textbook

Notes before or after the cases frequently cite to scholarly articles and additional judicial opinions that shed light on the current topic of study. You might wonder whether you are expected to find and read those cited materials to prepare for class discussion or examinations.

Unless your professor tells you otherwise, you are not expected to read those additional cited materials. Those additional resources are cited partly to verify the accuracy of the textbook's statements about the law. They could also be helpful if a student is interested in digging more deeply into a topic for a separate research project, either for an independent study or work in a law office. It would never hurt to find and read some of these materials for class, but you will seldom have time to do so in your normal preparation for your first-year Contracts course.

Some of the exercises in this book cite to the cases that inspired the facts of the exercises. If so, you need not look up the case, which often will present more complicated facts and legal analysis than does the exercise. You will fulfill the purpose of the exercise by applying the legal rules you have learned to the facts of the exercise, and then joining discussion of the exercise in class.

2. Treatises and Commercial Study Aids

To prepare for exams, you should summarize your course materials in an outline, organizing it around legal rules, and illustrating each rule with one or more one-sentence summaries of cases in which the rule was satisfied or not. You will find that the process of synthesizing cases, as briefly described in Section A.7 above, provides a bridge to outlining. Synthesis and outlining are sophisticated activities that are described in detail in a number of books about the study of law. One such book was written by the primary author of this textbook: Charles Calleros, *LAW SCHOOL EXAMS: PREPARING AND WRITING TO WIN* (2d ed. 2013).

You might be tempted to buy a commercially available outline of a course and simply study that outline. You will find, however, that doing so would be a poor substitute for composing your own outline, for at least two reasons: (1) the commercial outline will not be tailored to the perspective that your professor brings to the course, and (2) by far the greatest educational benefit of a course outline lies in the process of creating it, which forces you to gain a deep, working knowledge of the material. Reading someone else's outline cannot replace the intellectually demanding process of preparing your own outline, stated with precision but in your own words.

When reviewing course material while preparing your course outline, you might find it helpful to clear up any lingering confusion by consulting a respected treatise in the library or by comparing your summary with that in a commercial outline. This consultation is harmless so long as you begin with your own analysis.

Acknowledgments

I am very grateful to Vera Hamer-Sonn, Suzanne Lynn, and Sunny Larson for technical assistance, our College librarians for library assistance, and the following law students for research assistance or other substantial contributions to various drafts of this book, which has been used in class since Fall 2008: Alison Atwater (Class of 2010), Erin Maupin (Class of 2011), Natalya Ter-Grigoryan (Class of 2011), Jillian Tse (Class of 2011), Nedda Reghabi (Class of 2012), Rebecca Janssen (Class of 2013), Chinedu Orjih (Class of 2013), Edith Cseke (Class of 2013), Kevin Blood (Class of 2013), Kyle Sol Johnson (Class of 2015), Nathan Andrews (Class of 2016), Jennifer Hancock (Class of 2017), Kevin Hanlon (Class of 2017), Stephen Kaneshiro (Class of 2020), Cameron Stanley (Class of 2020), and Christina Jutzi (Class of 2021).

I also thank Professor Stephen Gerst for preparing chapters on third-party rights and on assignment and delegation, added to this book in 2013.

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January 2020

I wish to express my gratitude and appreciation to Professor Charles Calleros and his research assistant, Tim Forsman (Class of 2014), for their assistance and collaboration. I also wish to acknowledge the contributions made by my research assistant, Amanda Jaksich, and by Professor Warren Miller.

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January 2020

