

Contracts

Contracts

The Law of Promises

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BARRY UNIVERSITY
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*To Professor Kingsfield, who inspired me to become a Contracts professor;
to Patches, the cat who keeps going missing, year after year;
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I would also like to thank my current and former colleagues who encouraged me in the writing of this casebook and who also encouraged me to publish it, including Fred Jonassen (who taught from the book when it was self-published), Steve “There’s No Crying in Contracts” Maxwell, Lee Schinasi, Seema Mohapatra, and Eang Ngov. Special recognition is also owed to Dean Leticia Diaz for supporting my development as a teacher and a scholar. Thanks are owed to the anonymous outside reviewers who provided valuable comments on the casebook’s draft, including Frank Snyder (who chose to abandon anonymity).

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All errors are my own, and I look forward to the chance to employ the remedy of reformation to correct any such errors in a subsequent edition.

Preface

In my first years of teaching law, I used several popular Contracts casebooks, and each had its own strengths. As I used each one, it slowly became clear to me which of their strengths worked best for my students (and which did not).

I found my students understood the material better when provided the rules of law up front, rather than having to extract them from cases. They learned better when given clear explanations of the law prior to engaging in challenging case analysis. I came to recognize that they needed enough detail and nuance to understand how the rules applied in different factual situations (and to have the necessary foundation for studying for the bar exam), but not so much detail and nuance that it overwhelmed and confused them. Trying to cover too much of Article 2 of the Uniform Commercial Code was counterproductive because (with just four credit hours) there was barely enough time for students to learn and understand the common law of contracts. The rationale for a rule was helpful to them when its rationale wasn't obvious, but too much contract theory and policy tended to hurt their ability to apply the black letter rules. Covering numerous minority rules consumed precious time and did not provide much benefit. Students found historical discussions dry and unhelpful. They liked case analysis, but were more engaged when the cases were interesting to them, though they still wanted to read the classic cases.

So I decided to write my own casebook to incorporate what I had learned worked best for my students. A casebook that would provide the rules up front with clear explanations of how the rules applied. One that would include enough detail and nuance, yet not so much as to overwhelm the students. One that would include explanations of the rationale for rules when it would be useful, but not too much theory, policy, and history. One that would include interesting cases, while retaining the classic cases that any Contracts student should know.

For many years, I provided these materials solely to the students in my class, and each year revised them to incorporate what I had learned worked best with my students the previous year. I had no intention of publishing my materials for a wider audience. But as a result of positive student feedback, encouragement from current and former colleagues (including Fred Jonassen, who adopted the materials), and support from Carolina Academic Press, I decided to offer my materials for

publication, hoping that other professors might find my approach useful for their students.

The principal features of this casebook are the following:

- Thorough explanations of how the rules apply, with numerous examples.
- Explanations organized around the elements of claims and defenses, to increase student awareness of the importance of elements when applying rules of law.
- Cases with interesting facts and good explanations of the rules and how they apply, abridged to exclude discussions unrelated to the topic being covered.
- Questions after cases, designed to improve students' understanding of the case, rather than having lengthy comments and notes only tangentially related to the court's analysis.
- Numerous problems to improve students' ability to apply the law to the facts.
- Notes in boxed text for student engagement, including key points, common student mistakes, and exam tips.
- "Key Takeaways" at the end of each chapter.
- An appendix of the black letter law and a glossary of important terms.

This casebook's reliance upon the *Restatement (Second) of Contracts*, published by the American Law Institute (ALI), is based upon its accurate statement of existing law and the fact that courts have adopted many of the relied-upon provisions verbatim as the jurisdiction's common law. The *Restatement* is not relied upon when the provision at issue appears to have been aspirational and not gained substantial caselaw support, such that it cannot be considered an accurate statement of governing law. Article 2 of the Uniform Commercial Code (U.C.C.) (published by ALI and the Uniform Law Commission) is relied upon as it is statutory law in 49 states, and citations to and quotations from the U.C.C. are thus from the state statutes that have adopted the uniform act, and not to the uniform act itself, which is not law. Students should consult the *Restatement (Second) of Contracts* and the U.C.C. (the uniform act), and their comments and any illustrations, to gain a deeper understanding of the relevant law.

Like any casebook, this one is a work in progress. To paraphrase John Lasseter's comment about films, casebooks aren't finished, they're just published. I therefore welcome feedback from professors and students about how I can improve future editions to better accomplish the goal of helping students understand contract law and be prepared for the bar exam.

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Online Materials

Additional content for *Contracts: The Law of Promises* is available on Carolina Academic Press's *Core Knowledge for Lawyers* (CKL) website.

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