

Contracting Law

Contracting Law

SIXTH EDITION

Deborah Waire Post

PROFESSOR EMERITUS
JACOB D. FUCHSBERG LAW CENTER
TOURO COLLEGE

Thomas W. Joo

MARTIN LUTHER KING JR. PROFESSOR OF LAW
UNIVERSITY OF CALIFORNIA, DAVIS, SCHOOL OF LAW

Deborah Zalesne

PROFESSOR OF LAW
CUNY SCHOOL OF LAW

Nancy Ota

EMERITUS PROFESSOR OF LAW
ALBANY LAW SCHOOL



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2023
Carolina Academic Press, LLC
All Rights Reserved

ISBN: 978-1-5310-2519-9
eISBN: 978-1-5310-2520-5
LCCN: 2023930147

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

Printed in the United States of America

Contents

Table of Cases	xvii
Acknowledgments	xxi
Copyright Credits	xxiii
Editors' Note	xxv
Chapter One Introduction to Contract Law	3
A. Introduction to Legal Analysis: Reading a Judicial Opinion	4
<i>Allison v. J.P Morgan Chase Bank</i>	6
Note: The Historical and Economic Context	10
Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, <i>Steering Loan Modifications Post-Pandemic</i>	11
PRACTICE POINTS	11
1. The Facts of the Case	12
Storytelling	14
2. The Law: Sources of Legal Authority	15
a. Judicial Opinions	16
b. Legislation (Statutes)	16
c. Secondary Sources: Legal Commentary	19
3. Applying the Law to the Facts of the Case	19
B. Introduction to Contract Law: The Three Principles	23
1. Bargain	25
Bargain Theory and Alternative Theories	27
2. Reliance	28
3. Unjust Enrichment and Restitution	29
<i>Kirksey v. Kirksey</i>	31
Note: Exchange versus Gift	32
C. What to Expect for the Remainder of This Book	33

Chapter Two “Consideration” as a Basis for Enforcing Promises	35
A. Consideration: “Something” Bargained for in Exchange for the Promise	35
1. History of the Consideration Doctrine	36
2. A Practical Note	38
B. The “Something”: A “Performance or a Return Promise”	39
1. What Constitutes a “Performance or a Return Promise”?	39
<i>Hamer v. Sidway</i>	39
Note: Courts Do Not Weigh the “Adequacy” of Consideration	42
<i>Lawrence v. Ingham County Health Department</i>	43
PRACTICE POINTS	49
Note: Getting the Facts of Life	50
<i>Wood v. Lucy, Lady Duff-Gordon</i>	51
PRACTICE POINTS	52
Note: Justice Cardozo	53
2. Return Promises that Are Not Really “Something”	53
a. The “Pre-Existing Duty Rule”	54
<i>White v. Village of Homewood</i>	54
PRACTICE POINT: LEGAL DUTIES AND THE PRE-EXISTING DUTY RULE	57
b. “Illusory” Promises	58
<i>Flemma v. Halliburton Energy Services, Inc.</i>	58
PRACTICE POINT: WAS THERE “SOMETHING”?	62
C. The “Something” Must Be “Bargained For” in Exchange for the Promise	62
<i>United States of America v. Meadors</i>	64
Note: Further Examples of “Somethings” That Are Not Bargained for	68
PRACTICE POINTS	70
D. Bargain v. Altruism	70
Adam Smith, <i>The Wealth of Nations</i> (1776)	70
Adam Smith, <i>The Theory of Moral Sentiments</i> (1759)	71
PRACTICE POINTS	71
Chapter Three Contract Formation	73
A. Difference and Meaning in Communication: The Objective Theory of Interpretation	73
<i>Embry v. Hargadine, McKittrick Dry Goods Company</i>	74
PRACTICE POINTS	78
<i>Acedo v. Arizona Department of Public Welfare</i>	81
Note: Revocation of Consent to Adoption	85
<i>United Steelworkers of America, Local 1330 v. United States Steel</i>	87
Note: Plant Closings	90

<i>In re Estate of Steffes</i>	92
PRACTICE POINTS: CLIENT ADVISING AND ETHICS	102
Notes: Informal Contracts and the Objective Theory	103
Patricia J. Williams, <i>Alchemical Notes: Reconstructing Ideals from Deconstructed Rights</i>	107
<i>Konic International Corp. v. Spokane Computer Services, Inc.</i>	110
PRACTICE POINT: SEE BOTH SIDES	112
B. Offer and Acceptance: The Mechanics of Contract Formation	113
Note: The Polarity of the Offer-Acceptance Model	114
1. Was There an Offer?	114
<i>Southworth v. Oliver</i>	115
PRACTICE POINT	122
Note: Offer as a Manifestation of Willingness to Commit	123
<i>Leonard v. Pepsico, Inc.</i>	124
PRACTICE POINTS	131
Note: Interpretation and Context	132
2. Did the Offeree Accept the Offer?	132
<i>Panhandle Eastern Pipe Line Co. v. Smith</i>	133
a. The Content of an Acceptance Under the Common Law: The “Mirror-Image” Rule	136
b. The Mode of Acceptance	137
Acceptance by Promise (Express or Implied)	137
Exclusive Mode of Acceptance	137
Silence as a Mode of Acceptance?	138
<i>Russell v. Texas Co.</i>	139
Acceptance by Completed Performance	141
<i>CIM Insurance Corporation, et al. v. Cascade Auto Glass, Inc.</i>	142
Note: Acceptance of Standardized Forms and “Wrap” Contracts	143
Note: Arbitration Clauses	144
<i>Meyer v. Uber Technologies, Inc.</i>	146
<i>Nguyen v. Barnes & Noble, Inc.</i>	155
<i>Dye v. Tamko Building Products</i>	161
PRACTICE POINT: CONSUMER CONTRACTS	166
Michael I. Meyerson, <i>The Reunification of Contract Law: The Objective Theory of Consumer Form Contracts</i>	167
Nancy S. Kim, <i>Clicking and Cringing</i>	169
3. Contract Formation under Article 2 of the Uniform Commercial Code	171
a. When UCC Article 2 Applies	171
<i>Golden v. Den-Mat Corporation</i>	173

b. Uniform Commercial Code § 2-207	178
Note: No One Reads Anymore	179
<i>Step-Saver Data Systems, Inc. v. Wyse Technology</i>	179
Note: UCC Article 2	185
<i>Hydraulics Int’l, Inc. v. Amalga Composites, Inc.</i>	186
<i>DeFontes v. Dell, Inc.</i>	191
PRACTICE POINT: THE RESULTS OF CONSUMER LITIGATION	199
<i>Klocek v. Gateway, Inc.</i>	199
PRACTICE POINTS: KLOCEK V. GATEWAY	204
4. Termination and Revocation of the Offer Prior to Acceptance	204
<i>Dickinson v. Dodds</i>	205
PRACTICE POINT: PREVENTING REVOCATION OF AN OFFER USING AN “OPTION CONTRACT”	209
<i>Drennan v. Star Paving Company</i>	211
Note: The Revocability of Offers that Seek Acceptance by Performance	215
Chapter Four Alternatives to the Bargain Model: Promissory Estoppel, Restitution, and Promises Made in Recognition of a Past Benefit	217
A. A Brief History of Alternative Bases of Liability	218
B. Promissory Estoppel	221
<i>Ricketts v. Scothorn</i>	221
Note	224
PRACTICE POINT	226
1. The Promise	226
<i>State Bank of Standish v. Curry</i>	227
Note: Trust and Power	236
<i>Abbingdon v. Dayton Malleable, Inc.</i>	237
Note: Restructuring	242
2. Reasonably Expected Reliance: Action or Forbearance by the Promisee (or a Third Person)	244
<i>Carlisle v. T & R Excavating, Inc.</i>	244
<i>Alden v. Presley</i>	248
3. Harm	251
4. Injustice	252
C. Restitution — Non-Promissory Obligation Arising from Unjust Enrichment	252
1. What Makes Enrichment Unjust?	252
<i>Cotnam v. Wisdom et al.</i>	254

Note: Restitution, a.k.a. Quasi-Contract, a.k.a. Contract Implied in Law	257
PRACTICE POINTS	258
<i>Toalson v. Madison</i>	259
<i>Dews v. Halliburton Industries, Inc.</i>	261
<i>Bailey v. West</i>	264
PRACTICE POINTS: ENRICHMENT IS NOT ALWAYS UNJUST	268
2. Enrichment: The Benefit Received	269
<i>Emergency Physicians Integrated Care v. Salt Lake County</i>	269
3. The Priority of Contract Over Restitution	274
<i>Callano v. Oakwood Park Homes Corp.</i>	274
D. “Moral Obligation”: Promises Made in Recognition of a Past Benefit	277
<i>Mills v. Wyman</i>	277
<i>Harrington v. Taylor</i>	279
<i>Harrington v. Taylor</i>	280
<i>Webb v. McGowin</i>	281
Note: Enforcement Based on “Moral Obligation”	284
<i>Reece v. Reece</i>	285
E. Review of Bases of Liability	287
<i>Van Brunt v. Rauschenberg</i>	287
Orit Gan, <i>A Feminist Economic Perspective on Contract Law: Promissory Estoppel as an Example</i>	292
Note: Freedom and Constraints	293
Chapter Five Restrictions on Enforceability of a Bargained-For Contract	299
A. Statutes of Frauds: When a Bargained-For Contract Requires a Writing	300
California Civil Code § 1624	301
New York Consolidated Laws, General Obligations Law § 5-701	302
1. Is the Agreement “Within” the Statute?	303
<i>Foley v. Interactive Data Corp.</i>	304
2. Does the Agreement or Promise “Satisfy” the Statute?	307
a. Is the Agreement or Promise in Writing, or Is There a “Note or Memorandum” of It?	307
<i>Sterling v. Taylor</i>	308
b. Is the Note or Memorandum “Subscribed by the Party to Be Charged with the Contract”?	314
<i>Princeton Industrial Products v. Precision Metals Corp.</i>	314
PRACTICE POINT: THE ASYMMETRY OF STATUTES OF FRAUDS	318

3. UCC § 2-201: The “UCC Statute of Frauds”	319
<i>Metz Beverage Company v. Wyoming Beverages, Inc.</i>	319
Note: Are Statutes of Frauds Still Necessary?	323
B. Illegality and Violation of Public Policy	324
1. Illegality	324
<i>Jara v. Strong Steel Doors, Inc.</i>	325
<i>Montoya v. Beltre</i>	326
2. Violation of Public Policy	331
<i>A.Z. v. B.Z.</i>	332
<i>Kass v. Kass</i>	339
PRACTICE POINTS	348
<i>In re Baby “M”</i>	349
<i>In re Baby “M”</i>	358
PRACTICE POINTS: LEGISLATION, NARRATIVE, AND THE CONSTITUTION	362
C. Incapacity	363
1. Incapacity Due to Age	364
<i>Young v. Weaver</i>	365
2. Incapacity Due to Mental Illness or Disability	370
<i>Shoals Ford, Inc. v. Clardy</i>	371
Elyn R. Saks, <i>The Center Cannot Hold: My Journey Through Madness</i>	376
PRACTICE POINTS: MENTAL INCAPACITY	378
3. The Power to Contract and Civil Rights	380
<i>Hampton v. Dillard Department Stores, Inc.</i>	382
Note: Religion, Contract, and Civil Rights	388
Chapter Six Misconduct and Mistake	391
A. Unfair Pressure	391
1. Duress	391
<i>Sosnoff v. Carter</i>	392
<i>United States v. Bond</i>	396
Note: Physical Compulsion vs. Threat	401
Note: Intimate Partner Violence, Financing Practices, and Third-Party Duress	403
Note: Historical Financing Practices	404
2. Undue Influence	407
<i>Ferguson v. Jeanes</i>	407

B. Misrepresentation, Failure to Disclose, and Fraud	410
1. Misrepresentation	410
<i>Barrer v. Women’s National Bank</i>	411
<i>Vokes v. Arthur Murray, Inc.</i>	419
Notes on <i>Arthur Murray</i>	423
2. Omission as a Form of Misrepresentation	424
Marcus Cicero, <i>De Officiis, Book III, Chapter 12</i>	424
Note	427
<i>Hill v. Jones</i>	427
<i>Stambovsky v. Ackley</i>	433
PRACTICE POINTS	438
3. Fraud	439
<i>ACA Galleries, Inc. v. Kinney</i>	440
<i>Kang v. Harrington</i>	442
Note	446
<i>Izadi v. Machado (Gus) Ford, Inc.</i>	446
PRACTICE POINTS: DUTY TO READ?	450
<i>Flight Concepts Limited Partnership et al. v. The Boeing Company</i>	451
Note: Anticompetitive Contracts and Boeing Scandals	454
C. Unconscionability	455
<i>Williams v. Walker-Thomas Furniture Company</i>	457
Walker-Thomas Contract	461
Note: <i>Williams v. Walker-Thomas</i> and the “Law of the Poor”	463
PRACTICE POINTS	464
Deborah Waire Post, <i>The Square Deal Furniture Company</i>	465
PRACTICE POINTS	466
Note : Unconscionability	468
<i>Brooklyn Union Gas Company v. Jimenez</i>	470
Note: The Many Languages Spoken in the U.S.	472
<i>Brower v. Gateway 2000</i>	473
PRACTICE POINTS	477
D. Mistake	478
<i>ACA Galleries, Inc. v. Kinney</i>	478
<i>First Baptist Church of Moultrie v. Barber</i>	
<i>Contracting Company</i>	480
Note: Mercy and Judgment	484
Note: Mistake in Expression	485
PRACTICE POINT	486

Chapter Seven Changes after Formation: Impracticability, Frustration of Purpose, and Contract Modifications	487
A. Excusing Performance Due to Changed Circumstances	489
1. Impracticability (or “Impossibility”) of Performance	489
<i>Specialty Tires v. CIT Group v. Condere Corporation</i>	489
PRACTICE POINT: IMPRACTICABILITY	496
<i>Portland Section of the Council of Jewish Women v. Sisters of Charity</i>	497
<i>Cazares v. Saenz</i>	500
PRACTICE POINTS	504
2. Frustration of Purpose	504
<i>CAI Rail, Inc. v. Badger Mining Corp.</i>	504
Note: A Small Good Thing	509
3. Force Majeure Clauses	510
<i>1600 Walnut Corp. v. Cole Haan Co.</i>	511
Note: Analyzing and Learning from Contract Drafting	512
B. Contract Modifications and the Pre-Existing Duty Rule	515
1. Modifications	515
2. Modifications and the Pre-Existing Duty Rule	516
<i>Alaska Packers’ Ass’n v. Domenico et al.</i>	517
Note: The Alaska Packers Association	522
<i>Quigley v. Wilson</i>	522
PRACTICE POINTS	525
PRACTICE POINT: A GOOD FARMER?	525
<i>Farm Equipment Store, Inc. v. White Farm Equipment Co.</i>	526
 Chapter Eight Interpreting the Agreement	 531
A. Sources of Meaning	533
1. Types of Sources of Meaning	534
<i>Frigalment Importing Co. v. B.N.S. International Sales Corp.</i>	534
PRACTICE POINTS	539
<i>Nanakuli Paving and Rock Company v. Shell Oil Company, Inc.</i>	541
Note: Trade Usages and the CISG	547
<i>R.L.M. Dist. Co. v. W.A. Taylor, Inc.</i>	548
<i>Fisher v. Congregation B’Nai Yitzhok</i>	550
2. Is Meaning Agreed Upon by Parties or Imposed by Law?	552
a. Good Faith	553
<i>United Airlines, Inc. v. Good Taste, Inc.</i>	554
<i>Reid v. Key Bank of Southern Maine</i>	562
Note: Contracts and Racial Discrimination	568

b. Implied Terms under the UCC	569
i. “Gap Fillers”	569
ii. Warranties	570
iii. Requirements Contracts	571
<i>Simcala, Inc. v. American Coal Trade, Inc.</i>	572
B. Interpreting an “Integrated” Agreement	577
1. Using Extrinsic Evidence to Clarify Ambiguities in an Integration: Two Approaches	580
<i>Greenfield v. Philles Records, Inc.</i>	581
PRACTICE POINTS: THE RONETTES, RONNIE GREENFIELD, AND PHIL SPECTOR	585
<i>Pacific Gas and Electric Company v. G.W. Thomas Drayage & Rigging Company</i>	587
PRACTICE POINTS: LEGAL LANGUAGE FOR LAWYERS?	590
2. Summing Up: Four Corners/Plain Meaning vs. Contextual (PG&E) Approach	590
3. The Parol Evidence Rule: Additional Restrictions for a Particular Type of Extrinsic Evidence	592
Note: The Parol Evidence Rule in Question and Chart Format	594
<i>CBI Capital LLC v. Mullen</i>	598
<i>Betaco, Inc. v. Cessna Aircraft Co.</i>	601
PRACTICE POINTS: INTERPRETATION	610
C. “Blanket Assent” and the Interpretation of Standard Form Contracts	611
<i>Regional Bank of Colorado, N.A. v. St. Paul Fire and Marine Insurance Co.</i>	612
PRACTICE POINT: INTERPRETATION	616
Chapter Nine Remedies for Breach of Contract	617
A. “Expectation Damages”: The Standard Remedy for Breach of Contract Is Based on the Bargain Theory	617
1. Remedies and the Three Basic Principles	617
2. Expectation Damages: The Standard Remedy Compared with Other Measures	619
<i>Sullivan v. O’Connor</i>	623
Note: Breach, Measuring Damages, and the Three Basic Principles	628
PRACTICE POINTS	630
Note: Calculating Damages in <i>Sullivan v. O’Connor</i>	632
Note: Remedies for Alternative Causes of Action	634
Note: Contracts, Morality, and Penalties	634
PRACTICE POINTS	635

3. Limitations on Damages: Certainty, Foreseeability, and Mitigation	636
a. Certainty and Causation	636
<i>McDonald v. John P. Scripps Newspaper et al.</i>	636
PRACTICE POINTS: HARM, CAUSATION, AND	
LAWYERS' ETHICS	641
<i>Halliburton Co. v. Eastern Cement Corp.</i>	642
George Herbert, <i>The Temple</i>	646
Note: Difficulties in Calculating Damages with	
"Reasonable Certainty"	646
Note: What is the Value of a Human Life?	647
b. Foreseeability	649
<i>Hadley v. Baxendale</i>	649
Note: Foreseeability and Non-Pecuniary Loss	652
<i>Deitsch v. The Music Company</i>	653
Deborah Zalesne, <i>Gender Inequality in Contracts Casebooks:</i>	
<i>Representations of Women in the Contracts Curriculum</i>	655
<i>Liberty Homes, Inc. v. Epperson</i>	656
Note: Home	660
Note: Foreseeability, Non-Pecuniary Damages,	
and Civil Rights	660
c. Mitigation	661
<i>Davis v. First Interstate Bank</i>	662
<i>Parker v. Twentieth Century-Fox Film Corp.</i>	664
Note	669
B. Remedies under UCC Article 2	671
1. Remedies for Buyer When Seller Breaches: Market Price and	
Cover Damages	671
2. Remedies for Seller When Buyer Breaches	672
<i>Peace River Seed Co-Operative, Ltd. v. Proseeds Mktg.</i>	673
C. Specific Performance	680
<i>Sokoloff v. Harriman Estates Development Corp.</i>	681
Note: Why Do Courts Disfavor Specific Performance?	683
<i>Beverly Glen Music, Inc. v. Warner Communications, Inc.</i>	683
Lea S. VanderVelde, <i>The Gendered Origins of the Lumley Doctrine:</i>	
<i>Binding Men's Consciences and Women's Fidelity</i>	685
PRACTICE POINTS: SPECIFIC PERFORMANCE	689
D. Contract Terms Regarding Remedies	689
1. Liquidated Damage Clauses	689
<i>Kvassay v. Murray</i>	690
Note: Liquidated Damages Clauses	693
2. Limitation of Liability Clauses	694

<i>Elsken v. Network Multi-Family Security Corp.</i>	694
PRACTICE POINTS	698
<i>Figgie International, Inc. v. Destileria Serralles, Inc.</i>	700
Chapter Ten Advanced Issues in Interpretation and Remedies: Conditions, Material Breach, and Anticipatory Repudiation	707
A. Conditions of Performance	707
1. The Function of Conditions of Performance	707
2. Interpreting True Conditions	708
<i>Oppenheimer & Co., Inc. v. Oppenheim, Appel, Dixon & Co.</i>	709
PRACTICE POINTS: INTERPRETING CONDITIONS	713
PRACTICE POINTS: CONDITION OR DUTY? OR BOTH?	713
3. Excuse of Condition	715
<i>MidAmerica Construction Management, Inc. v. Mastec North America, Inc.</i>	717
4. Waiver of Conditions	723
<i>Munro v. Beazer Home Corp.</i>	723
B. Default Relationships Between Contract Duties	728
1. Constructive Conditions of Exchange	729
2. Material Breach and Substantial Performance	731
<i>Jacob & Youngs, Inc. v. Kent</i>	732
Note: Why Do People Sue?	736
<i>American Standard, Inc. v. Schectman</i>	737
PRACTICE POINTS: COST OF COMPLETION AND DIMINUTION IN VALUE IN SPECIFIC PERFORMANCE CASES	741
3. Other Protections for the Party Who Must Perform First	743
C. The UCC’s “Perfect Tender” Rule	744
<i>Ramirez v. Autosport</i>	744
Note: “Acceptance,” “Rejection,” and “Revocation of Acceptance” of Goods under the UCC	750
Note: The United Nations Convention on Contracts for the International Sale of Goods (UN CISG)’s “Fundamental Breach” vs. the UCC’s “Perfect Tender”	751
D. Anticipatory Breach and Related Doctrines	751
1. Anticipatory Breach	751
<i>Taylor v. Johnston</i>	752
2. Adequate Assurance of Due Performance	759
<i>AMF, Inc. v. McDonald’s Corp.</i>	759
PRACTICE POINT	762

Chapter Eleven The Interests of Third Parties	763
A. Third-Party Beneficiaries	764
<i>L.A.C. v. Ward Parkway Shopping Center Co.</i>	765
PRACTICE POINTS	771
<i>Henry Horner Mothers Guild v. The Chicago Housing Authority</i>	772
Note: Henry Horner Mothers Guild	775
<i>Cooper v. Charter Communications Entertainments I, LLC</i>	776
PRACTICE POINTS	781
<i>Fabian v. Lindsay</i>	782
B. Assignment of Rights and Delegation of Duties (and “Assignment of a Contract”)	790
1. Assignment of Rights	790
<i>Evening News Association v. Peterson</i>	791
Note: The Economic Value of Assignments	795
<i>Equico Lessors, Inc., etc. v. Ramadan</i>	797
2. Delegation of Duties, Including “Assignment of a Contract”	800
<i>Sally Beauty Company, Inc. v. Nexxus Products Company, Inc.</i>	801
<i>Hunter Tract Improvement Co. v. Stone</i>	810
Index	813

Table of Cases

1600 Walnut Corp. v. Cole Haan Co., 511, 512
Abbington v. Dayton Malleable, Inc., 237, 242, 243
ACA Galleries v. Kinney, 440, 478, 479
Acedo v. Arizona Dept. of Public Welfare, 81, 85, 86, 106, 450
Alaska Packers' Ass'n v. Domenico et al., 517, 522, 669
Alden v. Presley, 248
Allison v. J.P. Morgan Chase Bank, 4, 5, 6, 11–30 passim, 217, 218, 269, 796
American Standard v. Schectman, 737, 742
AMF, Incorporated v. McDonald's Corporation, 759
Austin Instrument v. Loral Corp., 395
A.Z. v. B.Z., 332
In the Matter of Baby "M", 349, 358, 362
Bailey v. West, 264, 268
Barrer v. Women's Nat'l Bank, 411, 419, 424, 439
Betaco, Inc. v. Cessna Aircraft Co., 592, 601, 610, 611
Beverly Glen Music v. Warner Communications, 683, 689
Brooklyn Union Gas Company v. Jimenez, 470, 477
Brower v. Gateway 2000, 473, 477
CAI Rail, Inc. v. Badger Mining Corp., 504, 510
Callano v. Oakwood Park Homes Corp., 274, 276, 280
Carlisle v. T & R Excavating, Inc., 244
Cazares v. Saenz, 500, 504
CBI Capital LLC v. Mullen, 598
Central Bank v. Copeland, 397, 398, 401
CIM Insurance Corporation, et al. v. Cascade Auto Glass, Inc., CIM, 141, 142
CIT Group v. Condere Corporation, 489
Cooper v. Charter Communications, 776
Cotnam v. Wisdom, 254, 257, 258, 259, 268
Cummings v. Premier Keller Rehab, 653

Davis v. First Interstate Bank, 662
DeFontes v. Dell, 191, 199, 201, 204, 477
Deitsch v. The Music Company, 653, 655, 656
Dews v. Halliburton Industries, Inc., 261
Dickinson v. Dodds, 205, 209, 210
Dobbs v. Jackson Women’s Health Organization, 47, 57, 357, 362
Drennan v. Star Paving Company, 211
Dye v. Tamko Building Products, 161, 166, 167, 470
Elsken v. Network Multi-Family Security Corp., 694, 699, 700
Embry v. Hargadine, 74, 78–80, 103–105, 112, 133
Emergency Physicians Integrated Care v. Salt Lake County, 269
Equico Lessors v. Ramadan, 796, 797
Evening News Association v. Peterson, 791
Fabian v. Lindsay, 782
Farm Equipment Store v. White Farm Equipment, 526
Ferguson v. Jeanes, 407, 634
Figgie International, Inc. v. Destileria Serralles, Inc., 700
First Baptist Church v. Barber, 479, 480, 484
Fisher v. Congregation B’nai Yitzhok, 550
Flemma v. Halliburton, 58
Flight Concepts v. Boeing, 427, 451, 454, 455
Foley v. Interactive Data Corp., 304, 319
Frigalment Importing Co. v. B.N.S. International Sales Corp., 534, 539–541
Golden v. Den-Mat, 173
Greenfield v. Philles, 346, 581, 585–587, 591
Groves v. John Wunder Co., 739–741
Hadley v. Baxendale, 649, 652, 654, 672
Halliburton Company v. Eastern Cement Corporation, 642, 646–647
Hamer v. Sidway, 39, 42, 43, 49, 65, 69, 790
Hampton v. Dillard Department Stores, Inc., 381, 382, 389
Harrington v. Taylor, 279, 280, 281, 284
Hawkins v. McGee, 625, 626
Henry v. Maytag Corporation, 92
Henry Horner Mothers Guild v. Chicago Housing Authority, 772, 775
Hentze v. Unverfehrt, 557
Hewitt v. Hewitt, 100, 102
Hill v. Gateway, 165, 195, 196, 201, 202, 204
Hill v. Jones, 427, 438
Hoffman v. Red Owl Stores, Inc., 231
Hume v. United States, 456, 463
Hunter Tract Improvement Co. v. Stone, 810
Hydraulics Int’l, Inc. v. Amalga Composites, Inc., 186

Izadi v. Machado (Gus) Ford, Inc., 446, 450
Jacob & Youngs, Inc. v. Kent, 731, 732, 736, 737, 741, 742
Jara v. Strong Steel Doors, Inc., 325
JN Contemporary Art LLC v. Phillips Auctioneers LLC, 512
Johnston v. Sorrels, 485
Kang v. Harrington, 430, 440, 442, 446, 450
Kass v. Kass, 335, 337, 339, 348
Kirksey v. Kirksey, 30, 31, 32, 35, 63, 70, 226
Klocek v. Gateway, Inc., et al., 199, 204, 477
Konic Int'l Corp. v. Spokane Computer Services, 110, 112, 113, 539
Kvassay v. Murray, 690
L.A.C. v. Ward Parkway Shopping Center, 764, 765, 781
Lawrence v. Ingham County Health Department, 43, 49, 50, 57
Lefkowitz v. Great Minneapolis Surplus Store, 128
Leonard v. Pepsico, 124, 131, 132
Liberty Homes v. Epperson, 656, 660
Lucy v. Zehmer, 167
Lumley v. Wagner, 684–689
McDonald v. Scripps Newspaper, 636, 641, 642, 646
Metz v. Wyoming Beverages, 319, 548
Meyer v. Uber, 146
MidAmerica Construction v. Mastec, 716, 717
Mills v. Wyman, 277, 281, 283, 284, 634
Montoya v. Beltre, 326
Munro v. Beazer Home Corp., 723, 728
Nanakuli Paving and Rock Company v. Shell Oil Company, Inc., 534, 541, 578n., 590
Nguyen v. Barnes & Noble, 149, 150, 155, 166, 170
Oppenheimer & Co., Inc., v. Oppenheim, Appel, Dixon & Co., 709, 713–716, 730
Pacific Gas and Electric Company v. G. W. Thomas, 346, 585, 587, 590–593, 596–597
Panhandle Eastern Pipe Line v. Smith, 133, 138
Parker v. Twentieth Century-Fox, 664, 669–671
Parker v. Arthur Murray, 423
Peace River Seed Co-Operative, Ltd. v. Proseeds Marketing, 673
Peevyhouse v. Garland Coal & Mining Co., 740, 742
Portland Section of the Council of Jewish Women v. Sisters of Charity, 497
ProCD, Inc. v. Zeidenberg, 195–197, 201–202
Quigley v. Wilson, 522, 723
R.L.M. Dist. Co. v. W.A. Taylor, Inc., 548
Raffles v. Wichelhaus, 111, 539

Ramirez v. Autosport, 744, 750
Ravelo v. County of Hawaii, 781
Reece v. Reece, 285
Regional Bank of Colorado v. St. Paul Fire and Marine Insurance, 612
Reid v. Key Bank, 562, 569
Ricketts v. Scothorn, 221, 224–225, 236, 252, 292, 634
Roe v. Wade, 47n., 57, 345, 356, 357, 362
Russell v. Texas Co., 139, 140, 281, 453
Sally Beauty v. Nexxus, 801
Sceva v. True, 255
Shoals Ford v. Clardy, 363, 370, 371, 378, 379
Simcala, Inc. v. American Coal Trade, Inc., 571, 572, 590n.
Sokoloff v. Harriman Estates Development Corp., 681
Sosnoff v. Carter, 392, 669
Southworth v. Oliver, 115, 123, 132, 137, 172
Specht v. Netscape, 149–150, 157
Specialty Tires v. CIT Group, 489, 496
Stambovsky v. Ackley, 433, 438, 634
State Bank of Standish v. Curry, 227, 236, 242
In re Estate of Steffes, 92, 102–103
Step-Saver Data Systems, Inc. v. Wyse Technology, 179, 175–186, 196, 200,
201, 203
Sterling v. Taylor, 308
Sullivan v. O'Connor, 622, 623, 628–634, 647, 652, 660
Taylor v. Johnston, 752
United Airlines v. Good Taste, Inc., 554
United States of America v. Meadors, 63, 64, 70, 402
United States v. Bond, 396, 401–404, 405
United Steelworkers v. U.S. Steel, 87, 90–91, 111, 226, 240, 242
Van Brunt v. Rauschenberg, 287
Vokes v. Arthur Murray, Inc., 419, 423, 427, 439–440, 451
Webb v. McGowin, 281, 284
White v. Village of Homewood, 54, 62, 514, 516, 698
Williams v. Walker-Thomas, 457, 461–462, 463–467, 468
Wood v. Lucy, 51, 53, 62, 553, 728
Young v. Weaver, 363, 365

Acknowledgments

I would like to extend my thanks to the faculty of CUNY School of Law, whose encouragement and open-mindedness about the teaching of law made this project possible. In particular, I thank my dear friends and co-conspirators, Jeff Kirchmeier, Andrea McArdle, Haley Meade, and David Nadvorney, whose influence is immeasurable. I also thank my wonderful students, whose energy and curiosity make the teaching of law fun and interesting and who challenge me in new ways each year. I am grateful to my co-authors, Amy, Deborah, and Nancy, for inviting me to collaborate on this book and for their guidance and inspiration of their work. I especially thank my new co-author Tom, who did the lion's share of the work on this edition, for his endless patience, brilliance, and humor. I owe a special debt to Sharon Hom, who paved the way for me as one of the original co-authors. Finally, I thank my parents, Saul and Shelly, and all the Zalesnes (and Retiks and Levins), for always being there for me with their love and support, and my wonderful partner Michael and amazing daughter Ella, for the inspiration and happiness they bring to me each day.

— DEBORAH ZALESNE

I am honored to be the newest co-author of this groundbreaking textbook, and I thank all the previous authors, Amy Kastely, Deborah Post, Sharon Hom, Nancy Ota, and especially Debbie Zalesne, my primary co-author on this edition (and new friend-for-life). I am particularly grateful to Deborah Post for inviting me to join this project, for serving as one of my first mentors in the field of Contracts, and for teaching me how to look at the Contracts course through the lens of social justice.

I thank the University of California, Davis, and the UC Davis School of Law for supporting this project. My first-year Contracts students, UCD Law Classes of 2024 and 2025, were of invaluable help with ideas for this edition as I taught them from the previous edition. Thank you to my research assistant, Héctor Sánchez Castañeda (UCD Law Class of 2024), Kristin Brandt and the rest of the Mabie Law Library staff, Jose Perez for graphic design assistance, and the UCD Law Faculty Support staff.

Thanks to Keith Moore, Ryland Bowman, Susan Trimble, and everyone at Carolina Academic Press, for excellent editing and production work.

Special thanks to Pressed Coffee + Records, Sacramento, CA, for the world's coolest remote office. And thanks, of course, to Irene Joo for her constant support and patience.

— THOMAS JOO

Copyright Credits

Orit Gan, *A Feminist Economic Perspective on Contract Law: Promissory Estoppel as an Example*, 28 MICH. J. GENDER & LAW 1, 4-5, 43 (2021).

Nancy Kim, *Clicking and Cringing*, 86 OR. L. REV. 797 (2007). Excerpt reprinted with permission of the author.

René Magritte, *The Treachery of Images (This is Not a Pipe) (La trahison des images [Ceci n'est pas une pipe])*, 1928. © 2022 C. Herscovici / Artists Rights Society (ARS), New York. Digital Image © 2022 Museum Associates / LACMA. Reprinted with permission of ARS and Art Resource, NY.

Michael I. Meyerson, *The Reunification of Contract Law: The Objective Theory of Consumer Form Contracts*, 47 U. MIAMI L. REV. 1263 (1993). Excerpt reprinted with permission of the University of Miami Law Review.

Elyn R. Saks, from *The Center Cannot Hold* by Elyn R. Saks, copyright © 2007. Reprinted by permission of Hachette Books, an imprint of Hachette Book Group, Inc.

Lea S. VanderVelde, *The Gendered Origins of the Lumley Doctrine: Binding Men's Consciences and Women's Fidelity*, 101 YALE L.J. 775 (1991-1992). Copyright © 1992 The Yale Law Journal Co. Excerpt reprinted with permission of The Yale Law Journal Co.

Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987) Copyright © 1987 by the President and Fellows of Harvard College. Excerpt reprinted with permission of Harvard Civil Rights-Civil Liberties Law Review.

Deborah Zalesne, *Gender Inequality in Contracts Casebooks: Representations of Women in the Contracts Curriculum*, FLA. INT'L U. L. REV. (2023). Excerpt reprinted with permission of the author.

Editors' Note

We have edited the cases and other reprinted material for readability and relevance to the subject matter. Deletions are noted with ellipses. In some instances, citations and footnotes are omitted without notation. We also attempted to achieve some uniformity with formatting styles and so the cases may look different from the official published versions. We have also included the first names of the judges who authored the opinions. Footnotes from the original cases retain their original numbering. Our editorial footnotes are marked alphabetically.

In our original textual material in this book, we use the pronoun “they” to refer to an individual person whose gender is unspecified. This more inclusive usage is recognized by the *Oxford English Dictionary* (which traces its use in print back to 1375), *The New Oxford American Dictionary*, and *Merriam Webster's Unabridged Dictionary*, among other authorities.

