

Understanding Contracts

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Understanding Contracts

FIFTH EDITION

Jeffrey T. Ferriell

GERALDINE W. HOWELL PROFESSOR OF LAW
CAPITAL UNIVERSITY LAW SCHOOL



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Preface

This book is about the law of broken promises. It is designed primarily for first-year law students enrolled in the traditional course in contract law. I also hope that practitioners, judges, and scholars who need an overview of the doctrine and theory of contract law will find it useful.

The text relies on established common law principles as reflected primarily by case law and the Restatement (Second) of Contracts, as well as on relevant provisions of Article 2 of the Uniform Commercial Code (U.C.C.), governing domestic sales of goods. It also contains limited coverage of the United Nations Convention on the International Sale of Goods (CISG), UNIDROIT Principles on International Commercial Contracts (PICC), and Principals of European Contract Law (PECL).

The text is limited to the range of material I might discuss with one of my more ambitious students who is seeking help in understanding contract law during a detailed conversation in my office or online. It uses several recurring fact patterns involving common situations that arise in the basic contracts course. Readers will quickly become familiar with the cast of characters and their deals: Sam's contract to sell his car to Barb; Industrial Supply's agreement to sell a quantity of new frimulators to Franklin Manufacturing; Julie's various agreements with Rhonda's Roofing, Winkler Builders, and Crash Construction to repair or renovate her home; and Karen's contract to sell her house to Phil, to mention a few. In addition, the book frequently refers to cases that are included in many of the most popular Contracts casebooks. They are the best examples of the core principles of the law of contracts, and no contracts book is a substitute for studying the facts, holdings, and rationales of these cases carefully.

Modern contract law practice includes a much wider variety of situations than those represented by these basic transactions. However, most of the development of contract law has involved one variation or another on three basic themes: contracts for the sale of land, contracts for the sale of goods, and contracts for construction or employment services. Where appropriate, I have added more elaborate details to these and other recurring situations to enable students to understand the wide variety of circumstances in which issues in contract law may arise.

In addition, I have tried to carefully explain concepts that students frequently struggle with. Over forty years of classroom teaching have left me with distinct impressions of the topics that students have the most difficulty with. I have attempted to describe these subjects with clear explanations and pointed examples, reflecting the type of fact patterns students are likely to encounter both in the classroom and on

final exams. These explanations frequently use the leading cases that are included in many Contracts casebooks.

The book also includes a detailed table of contents that is intended to serve as a basic outline of the course. I hope that students will find it useful in organizing their own comprehensive outlines. However, it is no substitute for the hard and useful work of organizing the material on your own. Included as well is an extensive set of internal cross-references in the hope that students will find them useful in drawing connections between the various strands of the course.

Finally, the book includes an extensive set of footnotes with citations that provide readers not only with support for the statements made in the text, but also refers them to supplemental resources that can be consulted for further study or for a more elaborate explanation of the topics covered by the text.

I enjoyed the assistance of many individuals in the production of this book. First and foremost were the efforts of my friend and co-author of the first edition, the late Penn State, Dickinson School of Law Professor Michael Navin. My sadness, as well as that of everyone who knew him, at his untimely passing, just weeks before the manuscript for the first edition was submitted to the publisher, in 2004, is still profound. I know that he would have liked to have participated in the corrections and improvements made in this edition and that he is frustrated over his inability to draw my attention to further improvements that could still be made. Not just the fifth edition of this book, but every other aspect of the lives of those who knew him, suffer from his conspicuous absence from our midst.

I received valuable assistance in preparing the fifth edition from Capital University Law School students Emily Smith, Kelly Wahlers, and Dr. Mackenzie Leadston. I received similar help with the fourth edition research assistants Stephen Tabatowski and Megan Nelson, with the third edition from Erin Porta and Eric Coss, with the second edition from Bryn Beers, Kristin Chek, David Lynch, Deborah Auten, Andrew Zamen-sky. Dickinson Law School student Matthew Stone and Capital University Law School students Katherine Johnson, Britton Atchley, Matthew Barkhurst, Damien M. Clifford, and Christina Lyons provided help with the first edition. Financial and other support from Capital University Law School and from Capital University Law School Deans Reynaldo Valencia, Rachel Janutis, Richard Simpson, and Jack Guttenberg were also key. I'm also thankful to my Capital University Law School colleague Peggy Cordray, whose office is down the hall from mine and who also teaches Contracts, for the many valuable conversations we've had over the years about Contract law, UCC Article 2, and topics that students sometimes have difficulty understanding.

I owe a particular debt of gratitude to Santa Clara University Law School Professors Emeritus Alan Sheflin and Gary Neustadter, and to Professor Emeritus David R. Warner III at Ohio Northern University College of Law, who provided direction and insight when I was first a law student and later a novice Contracts teacher. I am also grateful for the capable editorial assistance of Ellen Boyne and Cristina Gegenschatz of LexisNexis, and more recently Keith Moore, Elisabeth Ebben, Susan Trimble, and

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I thank primarily though to my Contracts students over the past 44 years, mostly at Capital, but also at Ohio State, Seattle University, and Ohio Northern, whose efforts to learn the law of contracts inspired this work. Their many thoughtful questions have made it necessary for me to refine my understanding of the law of contracts and have prompted me to always seek to provide clearer explanations and useful examples of how the law applies.

Finally, work on this project could not have been concluded without the steady support and constant patience of my wife, Ohio University Assistant General Counsel, Cheryl Hacker. She suffered through many early mornings, late evenings, and grouchy moods, both at our home in Columbus and at our cottage on Martha's Vineyard, while this and every edition of this book was being prepared. The final thanks are owed to my parents, Merlin T. and Frances S. Ferriell, who would have enjoyed seeing this book and every new edition of it.

The inevitable mistakes, of course, are entirely my own.

Jeff Ferriell
Columbus, Ohio & Oak Bluffs, Massachusetts
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