

Contracts

Contracts

Cases, Text, and Problems

THIRD EDITION

Charles Calleros

PROFESSOR

SANDRA DAY O'CONNOR COLLEGE OF LAW
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*To Debbie,
Alex and Alek,
Ben, Cecilia, and Miles, and
a future sibling for Miles,
my rays of sunshine.*
—Charles Calleros

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

Contents

Table of Cases	xxix
Preface	xxxiii
I. Pedagogy for this Course	xxxiii
A. Text	xxxiii
B. Casebook	xxxiv
C. Problem Method	xxxiv
D. Statutory Analysis	xxxv
II. Preparing for Class and for Exams	xxxv
A. Briefing Cases for Class	xxxv
1. Context and Role	xxxv
2. Identification of the Case	xxxv
3. Facts	xxxvi
4. Procedural History	xxxvi
5. Issue(s) and Holding(s)	xxxvi
6. Reasoning	xxxvi
7. Evaluation	xxxvi
8. Synthesis	xxxvi
B. Additional Reading	xxxvii
1. Citations in the Textbook	xxxvii
2. Treatises and Commercial Study Aids	xxxvii
Acknowledgments	xxxix
Chapter 1 • Introduction and Overview	3
I. Overview of Contracts and Sources of Contract Law	3
A. Agreements and Contracts in Our Society	3
1. Agreements That Are Not Legally Binding Contracts	4
2. Contract Terms That Vary from the Agreement	4
B. Sources of Contract Law	5
1. International, Federal, and State Law	5
2. Enacted Law, Common Law, and Case Law	5
a. Executive Branch Initiatives	6
b. The Uniform Commercial Code and Other State Legislation	6
c. Common Law and the Restatements	7
d. Case Law	10
C. The Study of Contract Law	11
1. Analyzing Statutes	11

2. Working with Case Law	11
3. Applying the Law to New Facts and Gaining Comfort with Legal Uncertainty	11
II. Exchanges and Contracts	12
A. Types of Exchanges	13
B. Interests Potentially Protected by Contract Law	13
1. Expectation Interest	14
2. Reliance Interest	14
3. Restitution Interest	14
C. Legal Remedies for Breach of Promise	14
1. Specific Enforcement	15
2. Award of Money Damages	15
a. Nominal Damages	15
b. Compensatory Damages	16
c. Punitive Damages	16
Exercise 1 — Elementary Exchanges	16
III. Summary	17
IV. Access to Justice and Alternative Dispute Resolution	18
Chapter 2 · Introduction to Mutual Assent: Basics of Offer and Acceptance	21
I. Overview	21
II. The Objective Theory of Assent	22
A. Mutual Assent and Authority	22
1. The Necessity of Mutual Assent	22
2. Actual and Apparent Authority	22
<i>European Import Co., Inc. v. Lone Star Co., Inc.</i>	23
<i>Robertson v. Alling</i>	24
B. The Standard for Determining Contractual Intent	26
<i>Lucy v. Zehmer</i>	27
Exercise 2.1 — Notes and Questions on the Objective Theory	32
C. The Objective Standard and Unilateral Mistake	34
1. The Traditional Rule	34
Exercise 2.2 — Relief under the Traditional Rule?	35
2. The Modern Trend: A Third Ground for Relief from Unilateral Mistake	36
<i>Donovan v. RRL Corp.</i>	36
Exercise 2.3 — Truly A Gem of a Case	38
III. The Offer	39
A. Expression of Commitment, Creating Power in the Offeree	39
Exercise 2.4 — Offer or Preliminary Negotiations?	40
B. Reading Party Communications in Context	41
<i>Fairmount Glass Works v. Crunden-Martin Woodenware Co.</i>	41
C. An Exercise in Case Synthesis: Are Newspaper Ads Offers?	43

	<i>Craft v. Elder & Johnston Co.</i>	44
	<i>Lefkowitz v. Great Minneapolis Surplus Store</i>	45
IV.	The Acceptance	47
	A. Offeror Can Define the Class of Offerees and the Mode of Acceptance	47
	<i>Conrad v. Hebert</i>	48
	<i>Hill v. Gateway 2000, Inc.</i>	50
	Exercise 2.5—Safeguards for ProCD Approach	52
	B. Acceptance by Return Promise	53
	Exercise 2.6—Acceptance by Return Promise	53
	C. Return Promise through Expressive Conduct	55
	Exercise 2.7—Acceptance by Return Promise Conveyed by Beginning Performance	55
	Exercise 2.8—Acceptance by Return Promise, Unambiguously Conveyed through Conduct	56
	D. Acceptance by Full Performance	57
	<i>Carlill v. Carbolic Smoke Ball Co.</i>	58
	Exercise 2.9—Questions and Notes on <i>Carbolic</i>	61
	Exercise 2.10—Overriding Default Rules about Notice of Acceptance	62
	Exercise 2.11—Acceptance After Discovering the Offer	62
	Exercise 2.12—Continuing Performance as Acceptance	63
V.	Review of Basic Offer and Acceptance	63
	Offers, in the Style of Dr. Seuss	63
	Exercise 2.13—Problems for Review	65
VI.	Internet Contracting and Standard Terms	67
	A. Contract Formation on the Web	67
	<i>Mohamed v. Uber Technologies, Inc.</i>	68
	Exercise 2.14—Notes and Questions on Notice of Terms	74
	B. Modifications as Contracts	78
	<i>Douglas v. U.S. Dist. Court for Cent. Dist. of California</i>	78
	Exercise 2.15—Agreement in the Initial Contract to an Extreme Modification Process	81
VII.	Escape Hatch—Intent Not to Be Bound	81
	A. Expressed Intent Not to be Legally Bound	81
	1. Oral Contract or Just Preliminary Negotiations Leading to a Written Contract?	82
	Exercise 2.16—Contract Formation Delayed Until Written Contract Signed?	82
	2. Disclaimers in Employee Manuals	83
	Exercise 2.17—Legislation Overturning Common Law	84
	3. Limits to Disclaiming Contract Formation—Accord and Satisfaction	84

Exercise 2.18—Notice of Offer to Settle	85
B. Context Reflecting Lack of Intent to be Legally Bound	85
Exercise 2.19—Engagement as a Contract to Marry	86
VIII. Summary	87
IX. Perspectives	88
A. Historical Note on the Objective Theory of Contract Formation	88
Consideration as Contract: A Secular Natural	
Law of Contracts	88
B. Learning the Law	89
Exercise 2.20—Practice Exams	89
Chapter 3 · Consideration (Bargained-For Exchange)	95
I. Overview	95
<i>Dougherty v. Salt</i>	95
Exercise 3.1—Recitals and Past Acts	96
A. Consideration as a Bargained-For Exchange	96
1. The Requirement of an Exchange	97
2. Reciprocal Inducement—The Exchange Must Be	
Bargained For	98
3. Questions to Consider	98
B. Comparing Common Law and Civil Law	99
C. Benefit and Detriment; Exchange with Reciprocal Inducement	100
1. <i>Hamer v. Sidway</i>	100
2. Note—Apparent Intention to Make a Legally Binding	
Promise	102
Exercise 3.2—Synthesizing <i>Hamer</i> with Other Cases, Real	
and Hypothetical	102
II. Elements of Exchange: Performances and Promises	102
A. Forbearance as a Performance	102
1. Forbearance from Asserting a Legal Claim	103
<i>Kim v. Son</i>	103
Exercise 3.3—Taking It Out on Your Contracts Professor	104
2. Uncertainty in the Facts or Law Underlying a Claim	105
<i>Abbott v. Banner Health Network</i>	105
B. Proposing to Exchange a Valid (Not Illusory) Promise	107
1. Illusory Promises	107
Exercise 3.4—Promises, Real and Illusory	109
2. Curing Illusory Promises with Obligations Implied in Fact	110
a. Implying an Obligation from all the Circumstances	111
b. Implying an Obligation from Other Terms of the Agreement	112
<i>Wood v. Lucy, Lady Duff-Gordon</i>	112
Exercise 3.5—Challenges in Curing Illusory Promises	114
III. Reciprocal Inducement: Is the Exchange Bargained For?	115
A. Introduction	115

Exercise 3.6—Are the Promises Independent or Reciprocal?	116
B. Bargained-For Exchange or Conditional Gratuitous Promise?	117
1. Spotting the Issue and Analyzing the Facts	117
<i>Kirksey v. Kirksey</i>	117
Exercise 3.7—Questions on Kirksey and Reciprocal Inducement	118
IV. Working with Consideration Concepts	120
A. Relative Values of the Things Exchanged	120
1. Equality in Exchange Not Required for Consideration	120
2. Defining the Floor with Reciprocal Inducement	121
3. Fairness in Exchanges	121
4. Finding Reciprocal Inducement in an Exchange of Equivalents	122
<i>Barfield v. Commerce Bank, N.A.</i>	123
B. The Pre-Existing Duty Rule	125
1. Promising to Perform the Same Duties Owed in an Existing Contract with the Other Party	125
<i>Alaska Packers' Ass'n v. Domenico</i>	125
Exercise 3.9—Questions on the Pre-Existing Duty Rule	128
2. State of the Pre-Existing Duty Rule	130
3. Applicability of the UCC to Hybrid Contracts	131
<i>Gross Valentino Printing Co. v. Clarke</i>	132
V. Historical Perspective on Consideration under Common Law	134
A. Early Forms of Action under Common Law	134
1. Early Forms of Action: Debt and Covenant	134
2. Assumpsit as a Form of Trespass on the Case	135
3. Assumpsit—Active Harm vs. Failure to Perform	135
B. Consideration in Modern Contract Law	136
1. Consideration Requires an Exchange	136
2. Consideration as Bargained-For Exchange	137
VI. Consideration Reconsidered	138
VII. Summary	138
Exercise 3.10—Practice Exams	139
Chapter 4 · Consideration II: Moral Obligation, Promissory Estoppel, and Obligations Implied in Law	141
I. Introduction	141
II. Moral Obligation Arising out of Past Performance	142
Exercise 4.1—The Problem of a Promise for Past Performance	142
A. The Traditional View: Moral Obligation Does Not Support Consideration	142
<i>Mills v. Wyman</i>	142
B. Departures from the Traditional View	144
1. Consideration in Renewal of an Obligation Discharged by Law	144
2. <i>Webb v. McGowin</i> : Directly Recognizing Moral Obligation	144

Exercise 4.2—Comparing <i>Mills</i> and <i>Webb</i>	146
III. Promissory Estoppel—Reliance as an Alternative Basis for Relief	146
A. Perceived Need to Supplement the Consideration Doctrine	146
1. Adapting Equitable Estoppel to Protect Reliance on a Promise	147
<i>Ricketts v. Scothorn</i>	147
Exercise 4.3—Consideration and Estoppel	149
2. Advancing Promissory Estoppel through the Restatements	150
Marco J. Jimenez, <i>The Many Faces of Promissory Estoppel: An Empirical Analysis Under the Restatement (Second) of Contracts</i>	151
B. Judicial Recognition of Promissory Estoppel as an Affirmative Cause of Action for Damages	153
Exercise 4.4—Equitable and Promissory Estoppel; Sword and Shield	154
<i>Newton Tractor Sales, Inc. v. Kubota Tractor Corp.</i>	155
C. Promises to Charitable Organizations	158
D. Consideration and Promissory Estoppel: Can They Coexist?	159
1. Does Promissory Estoppel Undermine Consideration?	159
2. A Brief History of Equity Jurisdiction in the Common Law System	159
Exercise 4.5—Matter and Anti-Matter?	161
E. Perspective—Divergence in English and U.S. Approaches to Promissory Estoppel	161
IV. Obligations Implied in Law	162
A. Quasi-Contract (Constructive Contract or One Implied in Law)	163
<i>Pyeatte v. Pyeatte</i>	163
B. The Elements of Quasi-Contract: Unjust Enrichment	170
1. Enrichment	170
Exercise 4.6—Enrichment: Providing Benefit by Saving a Life . . . or Not	171
2. Injustice	171
a. Expecting Compensation or Donating Benefit?	171
b. Reasonably Expecting Compensation	172
Exercise 4.7—Quasi-Contract in <i>Pyeatte</i> , <i>Mills</i> , or <i>Webb</i> ?	173
C. The Remedy for Quasi-Contract: Restitution	173
Exercise 4.8—Measuring Restitution in <i>Pyeatte</i>	174
Exercise 4.9—Restitution as Reparation for Slavery and Discrimination?	174
V. Liability Arising from Failed Negotiations	175
A. Promissory Estoppel	175
B. Quasi-Contract	175
C. Pre-Existing Contract to Negotiate Main Contract; Letters of Intent	176

VI. Summary, Review, and Exam-Taking	177
A. Summary	177
B. General Guidance on Essay Exams	178
Exercise 4.10—Practice Exams	178
Chapter 5 · Mutual Assent II: Termination of Offers under Common Law	181
I. Introduction	181
II. Termination Through Death of Offeror or Offeree	181
A. Death After Contract Formation	181
B. Death Before Offer Is Accepted	182
Exercise 5.1—Death and the Unilateral Contract	182
III. Termination Through Lapse: Specified Time or Reasonable Time	183
Exercise 5.2—Vagueness or Ambiguity in Lapse Terms	183
IV. Termination Through Revocation by the Offeror	184
A. Revocation Through Verbal Expression	184
<i>Hoover Motor Exp. Co. v. Clements Paper Co.</i>	185
Exercise 5.3—Questions and Notes on <i>Hoover</i>	188
B. Revocation Through Conduct (and Communicated by a Third Party)	189
Exercise 5.4—Questions on <i>Dickinson</i>	190
C. Option Contracts—Enforceable Promises Not to Revoke	191
1. Irrevocable Offers in a Common Law System	191
2. Offer, Promise Not to Revoke, and Option Contract	192
Exercise 5.5—Option Contract Puzzles	193
D. Option Contracts Based on Implied Promises Not to Revoke	194
1. Reliance on an Offer for a Unilateral Contract (or on an Implied Promise Not to Revoke)	195
a. Restatement § 45	196
b. Applying the Familiar Principle of Promissory Estoppel	196
Exercise 5.6—The Real Estate Broker	198
2. Reliance on an Offer for a Bilateral Contract	198
a. The Difficulty of Implying a Promise Not to Revoke	198
<i>Drennan v. Star Paving Co.</i>	199
Exercise 5.7—Dissenting Opinion	202
b. The Restatement (Second) and <i>Drennan</i>	202
Exercise 5.8—Past Exam	202
E. Back to the Forest	203
V. Termination Through Rejection by the Offeree	203
A. The Common Law Mirror-Image Rule	204
Exercise 5.9—Acceptance or Rejection?	204
1. Rejection v. Clarification or Suggestion	205
<i>Fairmount Glass Works v. Crunden-Martin Woodenware Co.</i>	205
<i>Ardente v. Horan</i>	206

Exercise 5.10—Avoiding the Mirror-Image Rule	208
2. Rejection and Termination through Variance	209
<i>Minneapolis & St. Louis Railway Co. v.</i>	
<i>Columbus Rolling-Mill Co.</i>	209
Exercise 5.11—Questions on <i>Rolling-Mill</i>	211
VI. Timing Problems—The Mailbox Rule	211
A. The Problem	211
B. The General Rule	212
C. Range of Application of the Mailbox Rule	213
Exercise 5.12—Applying the Mailbox Rule	214
VII. Summary	215
Chapter 6 · UCC Innovations in Mutual Assent	217
I. Introduction	217
A. State Enactment of the UCC	217
B. The UCC’s Relationship to the Common Law	218
II. Option Contracts without Consideration—“Firm Offers” under UCC § 2-205	219
Exercise 6.1—Dissecting Section 2-205	219
III. Basic Standards for Contract Formation: UCC §§ 2-204, 2-206(1)(a)	220
<i>European Import Co., Inc. v. Lone Star Co., Inc.</i>	221
IV. Acceptance by Words or Conduct under UCC § 2-206	223
Exercise 6.2—Interpreting UCC § 2-206	223
Exercise 6.3—Applying UCC § 2-206	223
V. UCC § 2-207 and the Battle of the Forms	225
A. Review: The Common Law Mirror-Image Rule and the Last-Shot Doctrine	225
1. The Offer (Pre-UCC Battle of the Forms)	225
2. Counter-Offer under the Common Law	226
3. The “Last Shot” Rule under Common Law	226
4. UCC Rejects the Common Law	227
B. Introduction to the Terms of Section 2-207	227
Exercise 6.4—Purposes of the Three Major Subsections of Section 2-207	228
C. Focus on Subsection 1 of UCC § 2-207	228
<i>CBS, Inc. v. Auburn Plastics, Inc.</i>	228
Exercise 6.5—Identifying and Analyzing the Elements of Subsection 1	228
<i>Brown Machine, Div. of John Brown, Inc. v. Hercules, Inc.</i>	229
<i>Office Supply Store.com v. Kansas City School Bd.</i>	230
Exercise 6.6—Section 2-207(1): Contract on the Forms?	231
D. Focus on Subsection 2 of UCC § 2-207	232
1. Treatment of Different Terms under Subsection 2	233

<i>Oakley Fertilizer, Inc. v. Continental Ins. Co.</i>	233
<i>Northrop Corp. v. Litronic Industries</i>	233
2. Significance of Merchant Status of Both Parties	235
<i>Office Supply Store.com v. Kansas City School Bd.</i>	235
Exercise 6.7—Identifying and Analyzing the Elements of Subsection 2	235
3. Additional Terms That Would Materially Alter the Contract Formed or Confirmed under Subsection 1	236
Exercise 6.8—Determining Whether Additional or Different Terms Are Added to the Contract That Was Formed under Subsection 1	236
E. Focus on Subsection 3 of UCC § 2-207	238
Exercise 6.9—Performance and Dispute	238
F. Return to PNTL—Terms Disclosed After Delivery	239
<i>Step-Saver Data Systems, Inc. v. Wyse Technology</i>	240
G. Reform and Reflection	246
1. Assessment of UCC § 2-207	246
2. UN Convention on Contracts for the Int’l Sale of Goods	246
3. Poetic Relief	246
The Tale of Two-Oh-Seven	246
VI. Summary	248
Exercise 6.12—Practice Exams	249
Chapter 7 · Completeness and Formality in Contract Formation	251
I. Overview	251
II. Definiteness	251
A. Indefiniteness at Either of Two Stages	252
<i>Pyeatte v. Pyeatte</i>	252
Exercise 7.1—Expectation Interest as a Ceiling	254
B. Curing Indefiniteness	255
1. Specification or Other Clarifying Events	255
2. Judicial Gap-Filling under Common Law	256
<i>Starland v. Fusari</i>	257
Exercise 7.2—The Cost of <i>Margrethe’s</i> Master’s Degree	259
Exercise 7.3—Agreement to Agree to What?	259
3. Curing Indefiniteness under the UCC	260
a. General Standards under UCC § 2-204	260
<i>Step-Saver Data Systems, Inc. v. Wyse Technology</i>	260
b. UCC Gap-Fillers	261
III. Statutes of Frauds—The Requirement of a Written Agreement	262
A. Overview	262
B. Example of Coverage: Arizona’s Statute of Frauds	263
C. Satisfying the Writing Requirement	264
1. General Statutes of Frauds	264

2. The UCC Statute of Frauds	265
<i>Koenen v. Royal Buick Co.</i>	266
3. Electronic Signature Laws, Emails, Text Messages, and Emojis	267
D. Exceptions or Mitigating Doctrines	268
1. Exceptions to a State’s General Statute of Frauds	268
<i>Munoz v. Kaiser Steel Corp.</i>	269
2. Exceptions to Arizona’s UCC Statute of Frauds	273
Exercise 7.4 — Exceptions and Mitigating Doctrines	273
IV. Summary	274
Chapter 8 · Grounds for Avoidance of the Contract	275
I. Overview and Form of Relief	275
II. Incapacity	276
A. Infancy	276
1. Capacity Defined	276
2. Avoidance and Restitution, or Ratification	277
a. Avoiding the Contract	277
b. Ratifying the Contract	277
Exercise 8.1 — Bright-Line Tests	278
B. Mental Illness or Defect	278
1. Incapacity, and Avoidance or Ratification	278
Exercise 8.2 — “High as a Georgia Pine”	279
2. Trend to Expand Test for Mental Incapacity	279
Exercise 8.3 — Merits of the Volitional Test	280
III. Duress and Undue Influence	280
A. Physical Duress	280
<i>Martinez-Gonzalez v. Elkhorn Packing Co. LLC</i>	280
B. Economic Duress	283
1. The Pre-Existing Duty Rule Is an Imperfect Tool to Control Coerced Modifications	283
2. The Test for Economic Duress	283
a. Improper Threat or Other Wrongful Act	284
b. Absence of Reasonable Alternatives	284
Exercise 8.4 — Duress and the Pre-Existing Duty Rule	286
<i>Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co.</i>	287
C. Undue Influence of a Subordinate or Weaker Party	290
<i>Martinez-Gonzalez v. Elkhorn Packing Co. LLC</i>	291
Exercise 8.5 — Deathbed Contract	292
IV. Misrepresentation	292
A. Introduction: Distinguishing Tortious Fraud, Breach of Warranty, and Avoidance for Misrepresentation	292
1. Tort: Fraud	293
2. Breach of Warranty	293
3. Avoidance for Misrepresentation	294

B. Misrepresentation During Bargaining	294
1. Three Kinds of Misrepresentation	294
a. Affirmative Falsehood	294
b. Half-Truth	295
c. Active Concealment	295
d. Nondisclosure Generally Is Not a Misrepresentation	296
<i>Stambovsky v. Ackley</i>	298
Exercise 8.6—Lack of General Duty to Disclose	301
2. Material Misrepresentation	301
Exercise 8.7—Disclosure of Material Facts	302
3. Misrepresentation of Fact, Not Opinion	303
4. Justifiable Reliance	304
a. Reliance	304
b. Justifiable	305
C. Discretion in Applying the Equitable Remedy of Avoidance	305
<i>Isaacs v. Bishop</i>	306
<i>Kannavos v. Annino</i>	307
Exercise 8.8—Practice Exam: Fiege v. Boehm Revisited	308
V. Mutual Mistake of Fact	309
A. “A Different Creature”	309
<i>Sherwood v. Walker and others</i>	309
B. Affecting Substance, Not Just Value or Quality	312
<i>Renner v. Kehl</i>	313
C. Allocation of Risk: Bargaining with Awareness of Uncertainty about the Subject Matter	315
<i>Aluminum Co. of America v. Essex Group, Inc.</i>	315
<i>Estate of Martha Nelson v. Rice</i>	317
Exercise 8.9—Allocating and Bearing Risk	320
D. Awarding Restitution when the Contract Is Avoided	322
<i>Renner v. Kehl</i>	322
Exercise 8.10—Cost of Providing Benefits versus Value to Recipient	323
E. Related Doctrines	324
1. Discharge of Obligations Due to Unexpected Post- Formation Events	324
2. Reformation for Fraud or Clerical Error	324
VI. Summary	325
Exercise 8.11—Practice Exam Questions	325
Chapter 9 · Non-Enforcement of Contract Obligations for Illegality, Violations of Public Policy, or Unconscionability	329
I. Overview	329
II. Direct Illegality	330
A. Illegality in Contract Formation, Performance, or Enforcement	330

B. Non-Enforcement of Illegal Contracts or Clauses	330
1. Restitution or No Judicial Assistance?	330
<i>Landi v. Arkules</i>	331
2. Enforcement after Severance of Illegal Provision	334
III. Violations of Public Policy	335
A. Overview	335
B. Agreement to Share Earnings in Unmarried Cohabitation	336
<i>Walker v. Perkins, Administrator</i>	337
<i>Marvin v. Marvin</i>	337
Exercise 9.1 — Synthesizing and Distinguishing Cases	342
C. Contract Meets Family Law — Surrogacy Contracts	342
1. Background, and Questions to Ponder	342
2. Selling One’s Baby	343
Exercise 9.2 — Enforcement of Surrogacy Contracts	343
<i>In re Baby M</i>	344
<i>Johnson v. Calvert</i>	345
3. Common Law of Contracts or Legislated Solutions?	352
4. Is Uniform Legislation Needed?	353
5. Disposition of Frozen Embryos	354
D. Non-Competition Agreements	354
1. Balancing the Interests of Various Stakeholders	354
a. Three Types of Agreements	354
b. Public Policy Implications for Each Type of Agreement	355
c. Rule of Reasonableness for Employee Non-Competition Agreements	356
d. Special Factors Counseling Against Enforcement	357
2. Revision of Unreasonable Non-Competition Agreements	358
a. Three Competing Approaches	358
Exercise 9.3 — Applying the Blue-Pencil Rule	359
b. Step-Down Provisions and the Blue-Pencil Rule	360
Non-Compete Agreements with Step-Down Provisions — Will Arizona Courts Enforce Them?	360
<i>Compass Bank v. Hartley</i>	362
Exercise 9.4 — Good Faith, Reasonableness, and Blue Pencils	362
Exercise 9.5 — Practice Exam: 60 minutes	363
Exercise 9.6 — Legislative and Administrative Proposals to Prohibit Employee Non-Competition Agreements	364
3. Contractual Alternatives to Employee Non-Competition Agreements	365
a. No-Poach Agreements	365
b. Repayment of Costs of Training	365
c. Nondisclosure of Trade Secrets	365
E. Agreements Not to Disclose Sexual Harassment or Assault	366

Exercise 9.7 — Balancing Policies Surrounding Sexual Harassment NDAs	367
IV. Unconscionability	367
A. Overview	367
1. Origins and Scope	367
2. Test for Unconscionability	368
a. Cumulative Effect of Relevant Factors	368
b. Procedural and Substantive Unconscionability	369
<i>Maxwell v. Fidelity Financial Services, Inc.</i>	371
Exercise 9.8 — Questions on <i>Maxwell</i>	378
B. Unconscionability and Mandatory Arbitration Clauses	380
1. Judicial Reaction to Class Action Waivers in Arbitration Clauses	381
2. Application of the Federal Arbitration Act	381
3. Unconscionability Still Applies When It Does Not Disfavor Arbitration	383
Exercise 9.9 — Modifying the FAA	384
C. Overlap between Unconscionability and Other Doctrines	384
1. Hidden Contract Terms: Overlap with Lack of Mutual Assent	385
2. Releases from Liability (Exculpatory Clauses): Overlap with Public Policy	386
<i>Miller v. The Sunapee Difference, LLC</i>	388
Exercise 9.10 — Exculpatory Clauses and Ethics	391
V. Summary	392
Exercise 9.11 — Issue-Spotting Exercise	393
Exercise 9.12 — Practice Exams	393
Chapter 10 · Content of the Contract: Parol Evidence Rule and Interpretation	397
I. Overview	397
II. Parol Evidence Rule	397
A. Introduction	397
B. Integrated Writings, and Levels of Integration	399
1. Partial Integration and the Parol Evidence Rule	400
a. Excluding Parol Evidence that Contradicts the Partial Integration	400
b. Admitting Parol Evidence of Consistent, Supplemental Terms	400
2. Complete Integration and the Parol Evidence Rule	401
a. Excluding Parol Evidence of Contradictory or Supplemental Terms	401
b. Admitting Evidence of Terms Relating to Other Transactions	402

Exercise 10.1 — Excluding Prior or Contemporaneous Agreements under the Parol Evidence Rule	404
3. Determining the Level of Integration	404
a. Merger Clause Establishing Complete Integration	405
Exercise 10.2 — Drafting a Merger Clause	406
b. Establishing the Level of Integration in the Absence of a Merger Clause	407
<i>Masterson v. Sine</i>	408
Exercise 10.3 — Is the Parol Evidence Rule Worth Keeping?	411
C. Purposes for Which the Parol Evidence Rule Does Not Bar Admission of Evidence	411
1. Subsequent Promises, Agreements, or Waivers	411
2. Parol Evidence of Conditions Precedent or Defects in Formation	412
Exercise 10.4 — False Disclaimers	413
3. Parol Evidence as an Aid to Interpretation	414
a. The Traditional Plain-Meaning Rule	414
b. Modern Trend to Reject the Plain-Meaning Rule	416
c. Points on a Continuum?	418
<i>Taylor v. State Farm Mutual Automobile Insurance Co.</i>	420
Exercise 10.5 — Interpretation or Contradiction?	426
4. The Reasonable Expectations Doctrine	427
a. Traditional Rule	427
b. Rebellion Against the Traditional Rules	427
Exercise 10.6 — Unconscionability Compared	429
c. The Reasonable Expectations Doctrine in Arizona	430
<i>Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.</i>	430
d. Relevance of the Reasonable Expectations Doctrine	437
III. Summary Judgment and Parol Evidence	438
A. The Role of the Parol Evidence Rule in Summary Judgment	438
B. Finding a Material Dispute of Fact Regarding Contract Interpretation	439
<i>Johnson v. Earnhardt's Gilbert Dodge, Inc.</i>	440
Exercise 10.7 — Examining a Motion for Summary Judgment	442
IV. Implied Obligations	442
A. Implied Obligations and the Parol Evidence Rule	442
1. Obligations Implied in Fact	443
2. Obligations Implied in Law	443
B. Implied Obligation of Good Faith	443
1. Introduction	443
<i>Northwest, Inc. v. Ginsberg</i>	444
2. Non-application to Termination At Will, and Other Limits to the Duty of Good Faith	445

3. Refraining from Impeding the Other Party’s Realization of the Benefits of the Contract	446
Exercise 10.8 — Impeding the Other Party’s Realization of the Benefits of the Contract	447
4. An Insurer’s Bad-Faith Denial of Coverage	447
5. Good Faith as a Limit on Exercising Discretion Granted by the Contract	448
<i>County of La Paz v. Yakima Compost Co., Inc.</i>	450
6. Good Faith as a Limit to Opportunistic Behavior in a Contractual Relationship	452
<i>Market Street Assoc. Ltd. v. Frey</i>	452
C. Implied Warranties	456
1. Warranties Implied as a Matter of Common Law	456
2. Warranties Defined or Imposed by Statute	456
Exercise 10.9 — Overview Questions on Warranties in the Sale of Goods	457
Exercise 10.10 — Which UCC Warranty Might Apply, and Does it?	457
V. Contract Interpretation	459
A. Overview of Interpretation and Construction	459
B. Interpretation	460
1. Intrinsic Evidence	460
<i>County of La Paz v. Yakima Compost Co., Inc.</i>	461
2. Extrinsic Evidence	462
a. Course of Performance	462
b. Course of Dealing	463
c. Trade Usage	463
C. Rules of Construction	463
1. Constructing Terms from Legal Policy	463
2. Contra Proferentem, Covid-19, and Business Insurance Contracts	465
D. Interpretation, Construction, and the Parol Evidence Rule	466
E. Frigaliment: A Case Study in Contract Interpretation	467
<i>Frigaliment Importing Co., Ltd. v. B.N.S. Int’l Sales Corp.</i>	467
Exercise 10.12 — Fictitious Transcript for Frigaliment	472
F. Choosing Between Competing Meanings and Between Objective and Subjective Intent	474
Exercise 10.13 — “What Is Chicken?” Reprised	475
Exercise 10.14 — Ambiguity in Proper Names	477
G. Deference to One Party’s Interpretation	477
<i>Han v. United Continental Holdings, Inc.</i>	477
Exercise 10.15 — Drafting Contracts in Plain English	479

VI. Summary	480
Exercise 10.16—Practice Exams	481
Chapter 11 · Duties, Conditions, Performance, and Breach	487
I. Overview	487
II. Duties and Express Conditions	487
A. Basic Definitions	487
1. Conditions Subsequent	488
2. Conditions Precedent	488
B. Express Conditions in Operation	488
1. An Express Condition May Qualify All Duties in the Contract	488
2. An Express Condition May Limit Only Some of the Duties in a Contract	489
3. Conditions of Satisfaction	490
a. Condition of Subjective Satisfaction of a Party	491
<i>Gibson v. Cranage</i>	491
Exercise 11.1—Good Faith and Opportunity to Cure	492
C. Avoiding Forfeiture from Non-Satisfaction of a Condition	493
1. The Power of Conditions	493
2. Strict Satisfaction of Conditions	493
3. Substantial Performance of Duties	494
4. Interpretation of Term as Express Condition Disfavored	495
Exercise 11.2—Duty or Condition	496
III. Constructive Conditions	496
A. Common Law Doctrines of Constructive Conditions, Substantial Performance, and Material Breach	497
1. The Legal Basis for Constructive Conditions	497
2. Satisfying Constructive Conditions	497
3. Substantial Performance, Material Breach, and Minor Breach	497
4. Cancellation and Cure	498
5. Breach by Repudiation	499
6. Distinguishing Between Minor and Material Breach	499
<i>Walker & Co. v. Harrison</i>	500
<i>Frazier v. Mellowitz</i>	503
Exercise 11.3—Express and Constructive Conditions	505
B. Sales of Goods: The UCC Perfect Tender Rule	506
Exercise 11.4—Assessing the Sod	509
C. Divisibility—Partial Recovery by a Materially Breaching Party under Common Law	509
1. Entire or Divisible Contract?	510
2. An Illustration of Divisibility	510
3. Factors Supporting or Undermining Divisibility	511
Exercise 11.5—Divisibility	512
IV. Excusing or Waiving Non-Satisfaction of Conditions	513

A. Excusing Non-Satisfaction of Conditions	513
1. Breach of a Duty of Cooperation and Non-Hindrancel	513
a. Hindering the Other Party’s Performance	514
<i>Barron v. Cain</i>	515
Exercise 11.6—Questions on <i>Barron v. Cain</i>	516
b. Failing to Facilitate the Other Party’s Performance	517
Exercise 11.7—The Case of the Fidgety Model	517
2. Preventing Satisfaction of an Express Condition	518
B. Waiver and Estoppel	518
1. Waiver of Material Breach and Non-Satisfaction of a Constructive Condition	518
2. Waiver of a No-Oral Modification Clause	519
3. The Case of <i>Foakes v. Beer</i> —Waiver of Incomplete Payment	521
4. Waiver of Non-Satisfaction of an Express Condition	521
<i>Haake v. Board of Educ. for Township High Sch. Glenbard Dist. 87</i>	522
Exercise 11.8—Mistake of Fact	524
V. Anticipatory Breach and Demands of Assurance of Performance	524
A. Anticipatory Breach	524
1. Anticipatory Breach by Repudiation or Inability to Perform	524
2. Canceling for Anticipatory Breach	525
3. Interpreting a Statement as Repudiation	525
Exercise 11.9—The Case of the Actor’s Demands	526
4. Options in Responding to Repudiation	526
5. Retraction of Repudiation	527
<i>Ratliff v. Hardison</i>	528
B. Assurance of Performance	531
1. Assurance of Performance in Sales of Goods	531
2. Common Law Extension to Non-Sales Disputes	532
VI. Discharge of Obligations Due to Events Taking Place After Contract Formation	533
A. Early Departures from Strict Liability	533
1. Impossibility	534
<i>Ontario Deciduous Fruit Growers’ Assoc. v. Cutting Fruit Packing Co.</i>	535
<i>A.L. Jones & Co. v. Cochran</i>	535
2. Frustration of Purpose	536
B. Modern Doctrines of Excuse for Frustration of Purpose and Impracticability	537
1. Frustration of Purpose	537
<i>Next Gen Capital, LLC v. Consumer Lending Assoc., LLC</i>	537
Exercise 11.10—Questions on Frustration of Purpose	540
2. Impracticability—The Successor to Strict Impossibility	541
a. Evolution and Current Shape of the Doctrine	541
<i>Waddy v. Riggleman</i>	542

<i>Mishara Constr. Co. v. Transit-Mixed Concrete Co.</i>	545
Exercise 11.11 — Drafting to Allocate the Risk of Contingencies	548
VII. Summary	549
Exercise 11.12—Practice Exam Questions	550
Chapter 12 · Remedies	555
I. Introduction—Vindicating the Expectation Interest	555
II. Specific Performance	556
A. Specific Enforcement Defined	556
B. Limitations on Specific Performance	556
1. Specific Relief Is Extraordinary	556
<i>Houseman v. Dare</i>	558
<i>Sokoloff v. Harriman Estates Development Corp.</i>	560
2. Specific Relief is Discretionary	560
<i>Lucy v. Zehmer</i>	562
3. Practical Limitations	563
III. Money Damages	563
A. Overview	563
1. Compensatory Damages to Vindicate Expectation Interest	563
2. General Measure of Damages Protecting Expectation Interest	564
3. Illustrations	564
Exercise 12.1 — Basic Damages Calculations	566
B. Other Employment: Loss Avoided or Expected Additional Earnings?	568
1. Loss Avoided Through a True Substitute Contract	568
2. Excess Capacity	568
3. Deduction for Loss That Could Have Been Avoided	569
<i>Parker v. Twentieth Century-Fox Film Corp.</i>	569
Exercise 12.2 — Deduction for Jobs Not Taken?	573
C. Measuring Direct Loss in Value in Construction Contracts	574
1. Cost to Complete or Diminution in Value?	574
2. Diminution in Market Value or Personal Value?	574
Exercise 12.3 — Measuring Direct Loss in Value	575
D. Limitations on Compensatory Damages	576
1. Mitigation	576
2. Certainty	576
<i>Rancho Pescado, Inc. v. Northwestern Mutual Life Ins. Co.</i>	577
3. Foreseeable Losses	578
4. Damages for Emotional Distress	580
<i>Wynn v. Monterey Club</i>	581
E. Preclusion of Punitive Damages and Penalty Clauses	583
1. The Test for Liquidated Damages	584

<i>Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC</i>	584
Exercise 12.4—Liquidated Damages Clause or Penalty?	587
2. Critical Examination of Policy Justifications	588
Charles R. Calleros, <i>Punitive Damages, Liquidated Damages, and Clauses Pénales in Contract Actions: A Comparative Analysis of the American Common Law and the French Civil Code</i>	588
3. Critiques of the Rule Against Freely Negotiated Penalty Clauses	589
<i>Lake River Corp. v. Carborundum Co.</i>	591
Exercise 12.5—Assessing the Rule Against Penalties	593
F. UCC Remedies	594
1. Recovery Limited to Compensation	594
2. Buyer’s Compensatory Damages for Seller’s Breach	594
a. Buyer’s Direct Loss in Value When Goods Are Accepted	594
b. Buyer’s Direct Loss in Value for Non-Delivered Goods	595
Exercise 12.6—Covering with Cow Hides	597
c. Buyer’s Incidental and Consequential Damages	598
3. Seller’s Remedy on Buyer’s Breach	599
a. Action for the Price	599
b. Seller’s Loss in Value from Buyer’s Wrongful Non-Acceptance	599
c. Seller’s Incidental (but not Consequential) Damages	600
d. Seller’s Recovery for Lost Volume in Sales	600
Exercise 12.7—The Buyer Backs Out	601
e. No Advantage in Cover at Bargain Price	602
IV. Alternative Remedies for Breach—Reliance, Restitution, and Disgorgement	603
A. Measuring the Remedy for Breach by the Reliance or Restitution Interest	603
B. Disgorgement of the Breaching Party’s Profits	605
<i>Kansas v. Nebraska</i>	606
V. Alternative Procedures for Securing Remedies	610
A. International Commercial Arbitration	610
1. A Brief History	610
2. Laws, Rules, and Contract Provisions Relating to Arbitration	611
a. National Arbitration Laws	611
b. Rules of Arbitration Procedure	612
c. The Arbitration Agreement	612
B. California’s Right to Repair Act	613
<i>McMillin Albany LLC v. Superior Court of Kern County</i>	614
VI. Summary	616
Exercise 12.9—Exam Questions	618

Chapter 13 · Rights of Contract Beneficiaries	627
I. Introduction	627
II. Creation, Vesting, and Enforcement of Third Party Rights	628
<i>Lee v. Raymond Bros.</i>	628
A. Distinguishing between Intended Beneficiaries and Incidental Beneficiaries	630
<i>Wolfgang v. Mid-America Motor Sports</i>	631
<i>Norton v. First Federal Savings</i>	633
B. Third Party Beneficiaries of a Government Contract	636
<i>Martinez v. Cenlar, FSB</i>	636
Exercise 13.1 — Finding an Intention to Benefit a Third Party	641
B. Vesting of Rights in a Contract Beneficiary	642
Exercise 13.2 — Determining if Third Party Beneficiary Rights Have Vested	643
C. Defenses to Actions Brought by a Third Party Beneficiary	643
<i>Naimo v. LaFianza</i>	643
Exercise 13.3 — Determining Defenses Arising out of the Contract	647
D. Enforcement Action by the Promisee against the Promisor	647
<i>Smith v. Maescher</i>	648
Exercise 13.4 — Enforcement Actions by Promisee	650
III. Summary	650
Chapter 14 · Assignment and Delegation	653
I. Introduction	653
II. Characteristics of Assignments of Contract Rights	654
III. Limitations on Assignment of Contract Rights	655
A. Assignment Barred if It Violates a Statute or Public Policy	655
<i>Dillman v. Town of Hooksett</i>	655
<i>Damron v. Sledge</i>	658
B. Assignment Barred if It Materially Changes the Other Party's Position	660
<i>Sogeti v. Scariano</i>	660
C. Contractual Prohibition of Assignment	663
<i>Piasecki v. Liberty Life Assurance Co. of Boston</i>	664
Exercise 14.1 — Contractual Prohibition of Assignment	666
IV. Defenses to Actions Brought by the Assignee of Contract Rights	667
Exercise 14.2 — Deductions from Payment to Assignee	667
V. Delegation of Duties	667
A. Overview: Delegation, Third Party Rights, and Novation	667
B. Limitations on Delegation of Contract Duties	668
<i>Arkansas Valley Smelting Co. v. Belden Mining Co.</i>	669
<i>Seale v. Bates</i>	670
Exercise 14.3 — Questions on <i>Seale v. Bates</i>	672

C. Limitations on Delegation of Contract Duties under the UCC	673
VI. Summary	673
Appendices	675
Appendix 1 — Texas Business and Commerce Code	677
Appendix 2 — Sample Contracts	725
Appendix 3 — Sample Answers to Practice Exam Questions	749
Index	813

Table of Cases

(Includes only main cases presented for student analysis, not all the cases cited, quoted, or used as inspiration for exercises.)

A.L. Jones & Co. v. Cochran, 33 Okla. 431, 126 P. 716 (1912)	535
Abbott v. Banner Health Network, 239 Ariz. 409, 372 P.3d 933 (2016)	105
Alaska Packers' Ass'n v. Domenico, 117 F. 99 (9th Cir. 1902)	125
Aluminum Co. of America v. Essex Group, Inc., 499 F. Supp. 53 (W.D. Penn. 1980)	315
Ardente v. Horan, 117 R.I. 254, 366 A.2d 162 (1976)	206
Arkansas Valley Smelting Co. v. Belden Mining Co., 127 U.S. 379 (1888)	669
Austin Instrument, Inc. v. Loral Corp., 29 N.Y.2d 124, 272 N.E.2d 533 (1971) (author's summary)	284
Barfield v. Commerce Bank, N.A., 484 F.3d 1276 (10th Cir. 2007)	123
Barron v. Cain, 216 N.C. 282, 4 S.E.2d 618 (1939)	515
Batsakis v. Demotsis, 226 S.W.2d 673 (Tex. Ct. Civ. App. 1949) (author's summary)	121
Booker v. Robert Half International, Inc., 413 F.3d 77 (D.C. Cir. 2005)	334
Brown Machine, Div. of John Brown, Inc. v. Hercules, Inc., 770 S.W.2d 416 (Mo. Ct. App. 1989)	229
Carlill v. Carbolic Smoke Ball Co., 1 Q.B. 256 (Ct. App. 1893)	58
CBS, Inc. v. Auburn Plastics, Inc., 67 A.D.2d 811, 413 N.Y.S.2d 50 (1979)	228
Compass Bank v. Hartley, 430 F. Supp. 2d 973, 981 (D. Ariz. 2006)	362
Conrad v. Hebert, No. 01-09-00331-CV, 2010 WL 2431461 (Tex. Civ. App. June 17, 2010)	48
County of La Paz v. Yakima Compost Co., Inc., 224 Ariz. 590, 233 P.3d 1169 (Ct. App. 2010)	450, 461
Craft v. Elder & Johnston Co., 38 N.E.2d 416 (Ohio Ct. App. 1941)	44
Damron v. Sledge, 105 Ariz.151 (1969)	658
Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co., 140 Ariz. 383, 682 P.2d 388 (1984)	430
Dickinson v. Dodds, 2 Ch. Div. 463 (1876) (author's summary)	189
Dillman v. Town of Hooksett, 153 N.H. 344, 898 A.2d 505 (2006)	655
Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC, 239 Ariz. 132, 366 P.3d 1022 (2016)	582
Donovan v. RRL Corp., 26 Cal. 4th 261, 27 P.3d 702 (2001)	36

Dougherty v. Salt, 227 N.Y. 200, 125 N.E. 94 (1919) New York Court of Appeals	95
Douglas v. U.S. Dist. Court for Cent. Dist. of California, 495 F.3d 1062 (9th Cir. 2007), <i>cert. denied sub nom.</i> Talk America, Inc. v. Douglas, 552 U.S. 1242 (2008)	78
Drennan v. Star Paving Co., 51 Cal. 2d 409, 333 P.2d 757 (Cal. 1958)	199
Estate of Martha Nelson v. Rice, 198 Ariz. 563, 12 P.3d 238 (Ct. App. 2000)	317
European Import Co., Inc. v. Lone Star Co., Inc., 596 S.W.2d 287 (Tex. Civ. App. 1980)	23, 221
Fairmount Glass Works v. Crunden-Martin Woodenware Co., 21 Ky. L. Rptr. 264, 106 Ky. 659, 51 S.W. 196 (1899)	41, 205
Fiege v. Boehm, 210 Md. 352, 123 A.2d 316 (1956) (author's summary)	105
Foakes v. Beer, 9 App. Cas. 605 (U.K.H.L. 1884) (author's summary)	521
Frazier v. Mellowitz, 804 N.E.2d 796 (Ind. App. 2004)	503
Frigaliment Importing Co., Ltd. v. B.N.S. Int'l Sales Corp., 190 F. Supp. 116 (S.D.N.Y. 1960)	467
Gianni v. R. Russel & Co., 281 Ia. 320, 126 A. 791 (1924) (author's summary)	403, 407
Gibson v. Cranage, 39 Mich. 49 (1878)	491
Gross Valentino Printing Co. v. Clarke, 120 Ill. App. 3d 907, 458 N.E.2d 1027 (1983)	132
Haake v. Board of Educ. for Township High School Glenbard Dist. 87, 399 Ill. App. 3d 121, 925 N.E.2d 297 (2010)	522
Hadley v. Baxendale, 9 Ex. 341, 156 Eng. Rep. 145 (1854) (author's summary)	578
Hamer v. Sidway, 124 N.Y. 538, 27 N.E. 256 (N.Y. 1891) (author's summary)	100
Han v. United Continental Holdings, Inc., 762 F.3d 598 (7th Cir. 2014)	477
Hill v. Gateway 2000, Inc., 105 F.3d 1147 (7th Cir.), <i>cert. denied</i> , 522 U.S. 808 (1997)	50
Hoover Motor Exp. Co. v. Clements Paper Co., 193 Tenn. 6, 241 S.W.2d 851 (1951)	185
Houseman v. Dare, 405 N.J. Super. 538, 966 A.2d 24 (App. Div. 2009)	558
In re Baby M, 109 N.J. 396, 537 A.2d 1227 (1993)	344
Isaacs v. Bishop, 249 S.W.3d 100 (Tex. App. 2008)	306
Johnson v. Calvert, 5 Cal. 4th 84, 851 P.2d 776, <i>cert. denied</i> , 510 U.S. 874 (1993)	345
Johnson v. Earnhardt's Gilbert Dodge, Inc., 212 Ariz. 381, 132 P.3d 825 (2006)	440
Kannavos v. Annino, 356 Mass. 42, 247 N.E.2d 708 (1969)	307
Kansas v. Nebraska, 135 S. Ct. 1042 (2015)	606
Kim v. Son, No. G039818 (Mar. 9, 2009)	103
Kirksey v. Kirksey, 8 Ala. 131 (1845)	117
Koenen v. Royal Buick Co., 162 Ariz. 376, 783 P.2d 822 (1989)	266
Kolodziej v. Mason, 774 F.3d 736 (11th Cir. 2014) (author's summary)	32

Lake River Corp. v. Carborundum Co., 769 F.2d 1284 (7th Cir. 1985)	591
Landi v. Arkules, 172 Ariz. 126, 835 P.2d 458 (Ariz. App. 1992)	331
Lee v. Raymond Bros., 2021 WL 4652336 (S.D.N.Y. 2021)	628
Lefkowitz v. Great Minneapolis Surplus Store, 251 Minn. 188, 86 N.W.2d 689 (1957)	45
Lucy v. Zehmer, 196 Va. 493, 84 S.E.2d 516 (1954)	27, 562
Market Street Assoc. Ltd. v. Frey, 941 F.2d 588 (7th Cir. 1991)	452
Martinez v. Cenlar, FSB, No. CV-13-00589-TUC-CKJ (D. Ariz. Sept. 3, 2014)	636
Martinez-Gonzalez v. Elkhorn Packing Co. LLC, 25 F.4th 613 (9th Cir. 2022)	280, 291
Marvin v. Marvin, 18 Cal. 3d 660, 557 P.2d 106 (1976)	337
Masterson v. Sine, 68 Cal. 2d 222, 436 P.2d 561 (1968)	408
Maxwell v. Fidelity Financial Services, Inc., 184 Ariz. 82, 907 P.2d 51 (1995)	371
McMillin Albany LLC v. Superior Court of Kern County, 4 Cal. 5th 241, 408 P.3d 797 (2018)	614
Merrimac Chemical Co. v. Moore, 279 Mass. 147, 181 N.E. 219 (1932) (author's summary)	111
Miller v. The Sunapee Difference, LLC, 918 F.3d 172 (1st Cir. 2019)	388
Mills v. Wyman, 3 Pick. [20 Mass.] 207 (1825)	142
Minneapolis & St. Louis Railway Co. v. Columbus Rolling-Mill Co., 119 U.S. 149, 7 S. Ct. 168 (1886)	209
Mishara Constr. Co. v. Transit-Mixed Concrete Co., 365 Mass. 122, 310 N.E.2d 363 (1974)	545
Mohamed v. Uber Technologies, Inc., 109 F. Supp. 3d 1185 (N.D. Cal. 2015)	68
Munoz v. Kaiser Steel Corp., 156 Cal. App. 3d 965, 203 Cal. Rptr. 345 (1984)	269
Naimo v. LaFianza, 146 N.J. Super. 362, 369 A2d 987 (Ch. Div. 1976)	643
Newton Tractor Sales, Inc. v. Kubota Tractor Corp., 233 Ill. 2d 46, 906 N.E.2d 520 (2009)	155
Next Gen Capital, LLC v. Consumer Lending Assoc., LLC, 234 Ariz. 9, 316 P.3d 598 (Ct. App. 2013)	537
Northrop Corp. v. Litronic Industries, 29 F.3d 1173 (7th Cir. 1994)	233
Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422 (2014)	444
Norton v. First Federal Savings, 128 Ariz. 176, 624 P.2d 854 (1981)	633
Oakley Fertilizer, Inc. v. Continental Ins. Co., 276 S.W.3d 342, 348 n.4 (Mo. App. 2009)	233
Office Supply Store.com v. Kansas City School Bd., 334 S.W.3d 574 (Mo. App. 2011)	230, 235
Ontario Deciduous Fruit Growers' Assoc. v. Cutting Fruit Packing Co., 134 Cal. 21, 66 P. 28 (1901)	535
Parker v. Twentieth Century-Fox Film Corp., 3 Cal. 3d 176, 474 P.2d 689 (1970)	569
Piasecki v. Liberty Life Assurance Co. of Boston, 312 Ill. App. 3d 872, 728 N.E.2d 71 (2000)	664
Pyeatte v. Pyeatte, 135 Ariz. 346, 661 P.2d 196 (Ct. App. 1983)	163, 252

Rancho Pescado, Inc. v. Northwestern Mutual Life Ins. Co., 140 Ariz. 174, 680 P.2d 1235 (Ct. App. 1984)	577
Ratliff v. Hardison, 219 Ariz. 441, 199 P.3d 696 (2008)	528
Renner v. Kehl, 150 Ariz. 94, 722 P.2d 262 (1986) (In Banc)	313, 322
Ricketts v. Scothorn, 57 Neb. 51, 77 N.W. 365 (Neb. 1898)	147
Robertson v. Alling, 237 Ariz. 345, 351 P.3d. 352 (2015)	24
Seale v. Bates, 145 Colo. 430, 359 P.2d 356 (1961)	670
Sherwood v. Walker and others, 66 Mich. 568, 33 N.W. 919 (1887)	309
Smith v. Maescher, 21 Cal. App. 4th 100, 26 Cal. Rptr. 2d 133 (1993)	648
Sogeti v. Scariano, 606 F. Supp. 2d 1080 (D. Ariz. 2009)	660
Sokoloff v. Harriman Estates Development Corp., 96 N.Y.2d 409, 415, 754 N.E.2d 184, 188 (N.Y. 2001)	560
Stambovsky v. Ackley, 572 N.Y.S.2d 672, 169 A.D.2d 254 (S. Ct. App. Div. 1991)	298
Starland v. Fusarli, 2015 WL 1220218 (D.N.J. Mar. 17, 2015)	257
Step-Saver Data Systems, Inc. v. Wyse Technology, 939 F.2d 91 (3d Cir. 1991)	240, 260
Taylor v. State Farm Mutual Automobile Ins. Co., 175 Ariz. 148, 854 P.2d 1134 (1993)	420
Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co., 584 P.2d 15 (Alaska S. Ct. 1978)	287
Waddy v. Riggleman, 216 W. Va. 250, 606 S.E.2d 222 (2004)	542
Walker v. Perkins, Administrator, 97 Eng. Rep. 985 (1764)	337
Walker & Co. v. Harrison, 347 Mich. 630, 81 N.W.2d 352 (1957)	500
Webb v. McGowin, 27 Ala. App. 82, 168 So. 196, <i>cert. denied</i> , 232 Ala. 374, 168 So. 199 (1936) (author's summary)	144
Williams v. Medalist Golf, Inc., 910 F.3d 1041 (8th Cir. 2018) (author's summary)	509
Wolfgang v. Mid-America Motor Sports, 111 F.3d 1515 (10th Cir. 1997)	631
Wood v. Lucy, Lady Duff-Gordon, 222 N.Y. 88, 118 N.E. 214 (1917)	112
Wynn v. Monterey Club, 111 Cal. App. 3d 789, 168 Cal. Rptr. 878 (Ct. App. 1980)	581

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 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 from 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, text provides background information to introduce statutes and judicial opinions. 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 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 other first-year courses, you will have 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. Most of the exercises summarize facts of hypothetical cases, sometimes simplifying or loosely inspired by the facts of actual cases. You should compare these hypothetical cases in the exercises with the facts, holdings, and reasoning of main cases, in the process of synthesis described in Section II.A.8 below.

Many exercises also convey additional information about the law, supplementing the main cases and explanatory text on legal rules before inviting application of the law to facts. Finally, some exercises ask you to consider how you would develop the law, either as a judge extending or refining the common law, or as a legislator considering proposed legislation. Accordingly, you must perform and reflect on assigned exercises in this book to achieve a deep understanding of the legal principles and to develop analytic skills necessary to work with legal rules.

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 for 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. Context and Role

For your own orientation, briefly identify the context of the case within the casebook. For example, consult the latest section heading in the book and identify the current topic of study, such as “Consideration/illusory promise.” After you have analyzed the case, add a few words to this line if you can identify a more specific role the case plays in the section or chapter, such as “Consideration/illusory promise—implication or interpretation to avoid illusory promise.”

Although you don't need to record this, consider adopting a professional role when studying the case to ensure that you are fully engaged. For example, you could imagine that you are representing one of the parties and must understand the opinion well enough to explain it to your client. Or you could imagine that you are the authoring judge, closely reviewing your opinion to determine whether it is sufficiently clear and persuasive that it will survive further appellate review or will attract votes from other judges on the panel hearing the case.

2. Identification of the Case

State the case name and authoring court. Record the page number in the casebook so that you can find it quickly in class or when reviewing your notes.

3. 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.

4. 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.

5. 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 with specificity, incorporating critical facts into the question, so that your holding is grounded in those critical facts.

6. Reasoning

Explain the court's reasons for its conclusions. First, summarize the legal rule adopted or applied by the court. Note (i) the kind of authority on which the court relies in formulating its rule, whether it cites to secondary authority (such as an article or treatise) or primary authority (such as previous published decisions of this or other courts), (ii) how the court analogizes or distinguishes previous decisions that arguably are controlling or persuasive, and (iii) whether the court supports the legal rule with policy considerations.

Second, explain how the court applies the rule to specific facts in the case to reach its conclusion. Which facts appear to be important to the court in making its decision? In some cases, the authoring court will remand to a lower court to engage in the fact analysis. If so, consider how you would apply the law to facts on remand, or how each party would argue that the facts should lead to one conclusion or the other in light of the legal rule.

7. Evaluation

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

8. Synthesis

Explain how this opinion's holding and reasoning compare to those of other assigned cases that address the same issue. Does it reach a different conclusion than does another opinion addressing the same issue? If so, do the cases present and apply different legal rules from different jurisdictions or different eras? More commonly in this casebook, do differences in the *facts* of the cases help explain why the

same legal rule led to different conclusions when applied to the facts? When a main case is followed by note cases or exercises presenting hypothetical cases, those are all “cases” that provide opportunities for synthesis with the main case or with each other.

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, Commercial Study Aids, and Artificial Intelligence*

To prepare for exams, you should summarize your course materials in an outline, organizing it around legal rules, and illustrating each rule with two or more one-sentence summaries of cases, each time briefly explaining why critical facts led to satisfaction or nonsatisfaction of the rule in the case. You will find that the process of synthesizing cases, as briefly described in Section II.A.8 above, provides a bridge to outlining. Synthesis and outlining are sophisticated activities that are described in detail in several books about the study of law. One such book was written by the primary author of this textbook: Charles Calleros, *LAW SCHOOL AND EXAMS: PREPARING AND WRITING TO WIN* (3d ed. 2021).

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.

Artificial intelligence (A.I.), such as ChatGPT, will increasingly play helpful roles in law offices. Eventually, it will allow attorneys to change the starting point of their work and to spend more time on checking and revising written products, and on the kinds of tasks that require human intellect, judgment, empathy, and creativity. To help prepare you for the use of A.I. in the practice of law, Exercise 10.15 in Chapter 10 asks you to use A.I. to assist in various ways with assessing and revising a poorly drafted contract.

In a law office, you must critically examine any product of A.I. and the sources to which it cites, because ChatGPT is well known for fabricating information and citing to wholly fictitious sources. To competently assess and revise a product generated by A.I., you must first develop expertise in the type of research, analysis, and presentation that you are reviewing. Accordingly, just as you limit the role of the conventional study aids discussed above, you should similarly limit the role of A.I. in preparing for class and exams. After all, you will not be allowed to use A.I. on your law school examinations, except perhaps in a specialized course that focuses on effective use of A.I. in a law office. To develop the analytic skills necessary to succeed on traditional law school exams and to use A.I. effectively in a law office, you must engage in the hard work of briefing and synthesizing cases and outlining course material on your own or in study groups, while using A.I. only to assess your work, if at all.

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