

Contract Law

Contract Law

Rules, Cases, and Problems

Statutory Supplement

Selected and Edited by

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PROGRAM ON ORGANIZATIONS, BUSINESS, AND MARKETS

CLASSICAL LIBERAL INSTITUTE

NYU SCHOOL OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN 978-1-5310-3096-4
eISBN 978-1-5310-3097-1

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

Printed in the United States of America

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Editor's Note

The law of contracts is vast and ancient. This statutory supplements strives to provide the most essential pieces of modern contract law so students are not puzzled. To focus on critical references for learning contract law basics, I selected black-letter rules that all law students should know to succeed in a first-year course and to pass the bar exam. Selection requires judgments. Some will find this collection too long while others will find it too short. I hope that most readers find it to be just right. But to find these selections appropriate, you must approach them in the proper manner.

To begin, let's establish what you are reading. Within these pages are rules, comments, and illustrations from the Restatement (Second) of Contracts (R. 2d Contracts) and the Uniform Commercial Code ("U.C.C.") Article 2, Sales. These are the two core statutory-like materials for most contract law courses. Contract law is state law, so each state will have its own contract law. Yet R. 2d Contracts explains the general rules of law in virtually all U.S. jurisdictions, and all U.S. jurisdiction adopted some version of the U.C.C. You are thus reading the closest approximation of the black-letter rules of "national" contract law.

Restatements are treatises describing the common law amid U.S. jurisdictions. You may have learned that treatises are non-binding. Yet R. 2d Contracts is a highly persuasive treatise that has almost the force of law in jurisdictions that follow it. R. 2d Contracts rules, therefore, can be treated as black-letter rules of law in most American contract law classrooms. The U.C.C. is a model statute, but it has been adopted in predominant part by virtually every U.S. jurisdiction, so it reflects binding statutory law across the U.S.

Restatement authors helpfully provided comments and illustrations that make meaning of the rules. The comments explain the rules. Black-letter rules do not necessarily mean what they say to a lay person. Lawyers must read technical rules technically. The comments are your guide to the meaning of contract law rules in the terms and norms of the profession of contract law. On that note: welcome to the legal profession!

I recommend that students read at least the headings of every comment and maintain a functional knowledge regarding how these comments impact the application of the rules. These explanations often color or change the patent (apparent) meaning of rules, so you must be aware of them. The comment headings are a sort of road map showing where you must sometimes take analysis in an unusual or counterintuitive direction.

The illustrations are often derived from quintessential cases. They show how the comments' explanations of rules are applied in specific instances. If you find yourself confused about how the rules function, consider the illustrations to visualize the application of black-letter rules as explained by specific comments. The illustrations typically demonstrate how a specific comment impacts the plain meaning of the black-letter rule to which it corresponds; for this reason, I have listed the illustrations within corresponding comments. Illustrations often reflect the key facts from cases frequently taught in contract law courses. If you pay attention to the illustrations, recognizing key facts and identifying what rule and comment it illuminates, you will glean insights about important cases.

I have also included state enactments of U.C.C. provisions where the statutory law deviates from the common law in an important way. As you probably know, statutes trump common law where they apply. Likewise, state-adopted U.C.C. provisions trump R. 2d Contracts principles where they apply. But the law of sales does not apply to every contract, nor does it provide important distinctions to every contract even where it does apply. For this reason, I have included U.C.C. references only where they make a material difference regarding cases you are likely to see in law school or on the bar exam.

Whenever you read a rule, you should attempt to understand it. One tried and true method for understanding rules is to "elementize" them, meaning, to break the rule apart into specific elements. By writing each rule in this manner, you begin to internalize the meaning of those rules, which will help you apply, analyze, and judge them later.

Finally, please note that the rules, comments, and illustrations from R. 2d Contracts are the intellectual property of the American Legal Institute. I purchased limited rights to reproduce these rules for you, but you cannot lawfully copy or distribute them further without authorization from the ALI.

Good luck in your legal studies!

Seth C. Oranburg

Acknowledgments

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