

**A POCKETBOOK
ON CONTRACTS:
“THE BIG PICTURE”**

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A POCKETBOOK ON CONTRACTS: “THE BIG PICTURE”

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MATTHEW  BENDER

Dedication

Professor Imwinkelried dedicates this text to:

— Cindy, Marie, Ken, and Kindra; and

— all of his former Contracts students at the University of California Davis,
Washington University in St. Louis, and the University of San Diego.

Acknowledgments

My two children, Marie and Ken, inspired me to write an early version of this pocketbook. Several years ago both decided to enter the private business sector. I thought that they might find a brief description of Contract law helpful in their new positions. Over the course of several weeks during one summer, I sent Marie and Ken a series of e-mail messages, each reviewing a particular aspect of Contract law. I retained those messages and years later they became the starting point for writing this pocketbook.

I want to particularly thank five former Contracts students at the University of California Davis: Justin Borrowdale, Samantha Gavin, John Hollis, William Moodie, and Zachary Ray. When I had prepared the rough draft of this manuscript, I asked several former students to review the manuscript to suggest improvements. These five students were kind enough to make the time to do so, and their suggestions significantly improved the final product.

Foreword

I have taught the first-year Contracts course for almost 40 years. At first, I was surprised that equally bright, equally conscientious students often achieved very different grades on the final examination. However, after rereading a large number of the students' answers and speaking with many of them, I discovered that almost all the students who excelled on the examination had something that most of the other students lacked — an understanding of “the big picture.”

Many first-year students are so frightened that they obsess over learning every minute “rule” mentioned in class or the assigned readings. They are so focused on the individual trees that they do not see the forest. In contrast, the students who have an overview of the course enjoy two advantages. In the first place, the individual rules make more sense to the students who see the “big picture” because they appreciate how the individual rule fits into the larger mosaic. Secondly and even more importantly, these students find it easier to develop a sequence of analysis for mutual assent issues or conditions questions. Study aids frequently encourage students to prepare “an attack outline” for the examination. That outline consists of a list of the key questions in the order in which the student is most comfortable addressing the questions.¹ A student will have a difficult time drafting an attack outline unless he or she can identify the appropriate sequence of analysis. Students who see the big picture have a decided advantage in this respect.

The simple purpose of this pocketbook is to help you see “the big picture.” This pocketbook does not have the scope of a hornbook or even a nutshell. This text does not cover all Contract rules or set out an exhaustive analysis of the rules that it does cover. Rather, this short text does only the following:

- It proposes an overall sequence for analyzing Contracts fact situations. As Chapter B explains, this text identifies four stages in the history of a contract: Formation, interpretation, performance, and litigation;
- At another level of analysis, within each stage the text identifies both the key policy considerations and the most basic rules; and
- For each stage, the text proposes a sequence of analysis. The text includes numerous diagrams to help you visualize the logical flow of the analysis.

The treatment of each doctrinal area is brief. Each chapter contains only a handful of pages. Again, this is not a hornbook.

My advice is that before studying the cases or statutory material assigned by your professor, you spend a few minutes reading the pertinent passage in this pocketbook. Initially, browse through the assigned material to identify the topic. Then locate that topic in either the table of contents or the very detailed index at the end of this pocketbook.

¹ Preparing the outline is similar to programming software. The programmer directs the computer to perform specified tasks in a pre-determined order. When a student prepares his or her attack outline, they are deciding on the sequence in which they will address the essential doctrinal questions when they attempt to analyze the fact situation on the examination.

Foreword

Hopefully, reading the pertinent passage in this pocketbook will help you: (1) appreciate how the individual rules discussed in the assigned material fit into the big picture; and (2) develop a sequence of analysis that you are personally comfortable using to dissect a fact situation on an examination. If you delay preparing your attack outline until the end of the semester and time permits, you might read this text cover to cover before you do so.

In the short term, this pocketbook may improve your performance on the examinations in the Contracts course. In addition, this approach should have long-term value for you. After four decades of teaching, I concluded that I wanted my students to take two things away from the course. First, I wanted them to have refined their basic analytic skill of case analysis.² Second, I hoped that they would develop a personal analytic approach to Contracts. On the first day of class I warn my students that even before they graduate, courts and legislatures will have modified some of the individual rules we discussed in class. Concentrating on learning the individual rules is thus short-sighted. However, developing a sequence of analysis for evaluating Contracts fact situations can stand the students in good stead for decades of practice. Doing so can have enduring value for you. In short, this pocketbook is designed to help you achieve short-term success on your examinations and long-term success in commercial practice.

² Other courses emphasize different analytic skills. For example, a course such as Evidence can focus on statutory interpretation skills.

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