
PREFACE

In the beginning there was the textbook. It consisted of explanatory text. Students studied contracts largely on their own using treatises such as those by Blackstone and Kent or summaries of these treatises written by learned practitioners. Next came the casebook. It consisted of cases. Casebooks were developed for teaching contracts in the university classroom setting using the “case method.” Then came the multivolume modern specialized treatises, the Restatements, the Realist Revolution, the Uniform Commercial Code, and, most recently, an explosion of legal scholarship with an increasing emphasis on legal theory.

As contracts casebook authors struggled to cope with each of these developments, contracts casebooks were transformed into an amalgam of highly edited cases and “squibs,” fragments of law review articles, excerpts from the Uniform Commercial Code and the Restatement — and, of course, the ubiquitous “note material.” The idea was to integrate the diverse sources of contract law in a single tightly edited volume. However, this evolution from casebook to integrated snippets of material has resulted in several undesirable consequences.

First, contracts teaching materials are now predigested. Practicing lawyers and legal scholars must scan whole cases, whole articles, and whole statutes to glean the information relevant to their problem. Unfortunately, to get everything into a single volume, cases, articles, and other materials are so heavily edited that students are not required to sift through the materials themselves. The scanning has already been done for them by the casebook author. Rather than gleaning the message of a case or an article, the challenge posed to students and professors by today’s casebooks is to decipher the casebook *author’s* message hidden in the structure of the materials.

Further, because highly edited casebooks inevitably take on a heavy dose of their authors’ views of contracts, novice professors are forced either to learn and accept the author’s viewpoint or to swim heroically against the tide. Experienced professors with independent minds are less likely to engage in fighting the casebook and are more likely to supplement it with their own materials, perhaps eventually abandoning the casebook altogether. While it is inevitable that the author’s views will be reflected in any casebook, the more heavily edited and integrated a casebook is, the more difficult it becomes for teachers to project to students their own views of contract.

Finally, to make room for more cases about complex commercial transactions, contracts casebooks have increasingly abandoned the classic cases that contracts professors still debate to this day. Complicated commercial

fact patterns make contracts seem remote from the life experience of average first-year law students, who are required to take the course but may or may not be interested in pursuing careers practicing commercial law. As a result, contracts professors are at a competitive disadvantage with their colleagues who teach seemingly more engaging first-year subjects such as criminal law or torts.

This book charts a different course. It contains far fewer cases that are more lightly edited than has become the norm. In addition to commercial transactions, I have favored a mix of classic and very recent cases involving provocative controversies,¹ memorable fact patterns,² and public figures.³ These are cases that lend themselves to discussing both basic contract doctrine and the broad philosophical, economic, and political implications of adhering to these legal rules and principles.

In place of vexatious note material, students will find “Study Guides” before most cases and, after each topic, “Reference” citations to the most popular and respected contract treatises.⁴ In this way, students receive useful questions and suggestions *before* they read a case and ready access to more comprehensive and authoritative explanations of the material than is possible in a casebook. Each section also includes relevant provisions of the Uniform Commercial Code and the Restatement (Second) of Contracts.

I believe it is safe to say that this casebook contains a larger portion of the scholarship providing context on the famous contracts cases than any other. These “relational background” materials will enrich the students’ understanding of the cases and will stimulate a deeper classroom discussion than will cases or statutes alone. Students actually *enjoy* them! They also illustrate that opinions of appellate courts are often surprisingly incomplete and that one’s sympathies for the parties may shift upon learning more about the facts. In addition, historical, comparative, ethical, economic, statutory, precedural, empirical, commercial, and theoretical “background materials” were selected and edited to engage students with the subject of contracts and spark debate, but also to be accessible. They can be assigned as required or optional reading, or they may be skipped altogether without detracting from doctrinal coverage, thereby greatly shortening the book.

This fourth edition largely tweaks what has become a very popular teaching tool.

- The introduction now explains the origins of and relation between the Restatement (Second) of Contracts and the Uniform Commercial Code.

1. For example, surrogacy agreements, failed vasectomies, involuntary servitude, palimony claims, sexual harassment, reporters’ promises of confidentiality, and children’s rights.

2. For example, Chevy Corvettes, Carboloc Smokeballs, custom stereos, oil embargoes, cancelled coronations, football players, opera singers, college catalogues, employment manuals, computer software, and pregnant cows.

3. For example, Shirley Maclaine, Robert Reed, Brooke Shields, Jack Dempsey, Lee Marvin, Lillian Russell, and Elvis.

4. References are provided to E. Allan Farnsworth, *Contracts* (4th ed. 2004), John D. Calamari & Joseph M. Perillo, *Contracts* (5th ed. 2003), John E. Murray, *Murray on Contracts* (4th ed. 2001).

- Two more “classic” cases have been added: *Sullivan v. O’Connor* (Chapter 2) and *Kirksey v. Kirksey* (Chapter 9), along with fascinating new background material on *Kirksey*.
- Newly published relational background materials are now provided after *Rockingham County v. Luten Bridge Co.* (Chapter 2), *Lumley v. Wagner* (Chapter 3), *Wood v. Lucy, Lady Duff-Gordon* (Chapter 5), and *Webb v. McGowin* (Chapter 9).
- The e-commerce materials in Chapters 3 and 6 have been updated to include *Register.com, Inc. v. Verio, Inc.* (replacing *Ticketmaster v. Tickets.com*) and *Cloud Corp. v. Hasbro, Inc.* (replacing *Parma Tile*).
- *Union Carbide Corp. v. Oscar Mayer Foods Corp.* has been added to the discussion of §2-207 in Chapter 5, *Internatio-Rotterdam v. River Brand Rice Mills* replaces *Inman v. Clyde Hall Drilling* in Chapter 13, *Gatton v. T-Mobile USA* has been added to the discussion of unconscionability in Chapter 16, and *Transatlantic Financing Corp. v. United States* replaces *Eastern Air Lines v. Gulf Oil Corp.* in Chapter 17.

For those professors who wish to teach contract theory by means of excerpts from legal scholarship, the new edition of the anthology *Perspectives on Contract Law*⁵ is designed to mesh harmoniously with the organization of this casebook. In contrast to the complex and sometimes idiosyncratic organization of some other casebooks, a great effort was made to adhere to a comprehensible *modular* organization reflecting the cause of action for breach of contract: Enforcement, Mutual Assent, Enforceability, Performance and Breach, and Defenses. While starting with enforcement or remedies is sometimes controversial (and I explain why I chose to do so in the introduction to Chapter 2), the modular construction of the casebook permits professors easily to reorder these topics as they see fit.

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5. Randy E. Barnett, *Perspectives on Contract Law* (3d. ed. 2005).