

PREFACE

Our Approach to the Second Edition

We have been pleased with the First Edition of this book and have enjoyed teaching from it. Our students have told us that they appreciate our efforts to be clear and to make the materials accessible. They also like the modern cases and our deliberate selection of cases with interesting, sometimes even amusing, facts. We and our students have found that the combination of text, court opinions, questions, and problems allows for more focused class preparation and enhances class discussion. We have therefore been careful, in revising this book for its Second Edition, to preserve what we consider to be the strongly beneficial features of the book, and to adhere to the philosophy and approach of the First Edition. However, we have taken advantage of our experience in teaching from the First Edition, as well as of comments and suggestions from colleagues who have used the First Edition, to refine and update the book in a number of ways.

In each of the following sections, we outline the changes that we have made in the Second Edition. In short, in the Second Edition we have made some additions and substitutions in our case selection; we have revised and updated the text, questions, and problems; we have added to the questions and problems that address transactional issues; we have placed additional emphasis on electronic contracting; we have included treatment of the revised versions of Uniform Commercial Code (UCC) Articles 1 and 2; and we have enhanced international and comparative perspectives.

Our General Philosophy and Approach

Even a casual browsing of this book will reveal that it does not follow the traditional form of a casebook. It is not simply a collection of edited court opinions, extracts from law journal articles, and citations. Rather, it is an interwoven combination of explanatory text, edited court opinions, notes, questions, and problems. Throughout, we intend to provide a coherent and guided treatment of the subject of contract law and, more generally, of legal reasoning, argument, philosophy, and practice. In adopting this approach, we attempt to give students a sufficiently full and complete set of readings for each class assignment to enable them to prepare effectively for a rich and challenging class discussion.

The law is infinitely complex. We welcome the complexities and subtleties of contract law, and recognize that it presents many questions that have no ready answers. However, we believe that there is no need to aggravate the law's complexity by keeping students in the dark about matters that, if presented clearly, can help them to focus on more

challenging issues, understand central rules, learn to apply principles and policies of law, and develop a sense of the overall structure and purpose of doctrine. We are confident that this book will amply challenge any student, but that it will do so without creating undue confusion and consequent frustration. It is our hope that this approach will allow students to reach a subtler and more sophisticated appreciation of contract law and analysis.

This book is designed to foster, and to make more rewarding and effective, the collaborative discourse between the professor and students and among students. In our experience, the conversation is deeper, and the experience more enjoyable and enlightening, if the reading prepares students by providing context, background, and basic information and explanation that helps them to understand the issues that will be tackled in class discussion. Although the book provides considerably more information and explanation than is commonly found in casebooks, this does not preempt class discussion or spoon-feed the students. On the contrary, it allows them to attain a level of knowledge and understanding before entering the classroom that greatly enhances their ability to make a meaningful contribution to class discussion and to engage in the kind of critical thinking and rigorous analysis that is so vital to an understanding of the law.

The Use of Case Analysis as a Teaching Tool

As in the First Edition, we continue to use the widely accepted pedagogy of case analysis as our principal teaching tool. Mastery of case analysis is fundamental, and it must be taught thoroughly to any person who aims to function as a lawyer in our legal system. We have edited cases carefully and sometimes quite rigorously to keep them to a manageable length and to focus the students' attention on the issues relevant to class discussion. Sometimes, where efficiency and space constraints call for it, we have chosen to provide case notes rather than full extracts of the opinions.

In the Second Edition we have continued our strong preference for modern cases and have added a number of new opinions decided in the years following the publication of the First Edition. We like to use new cases where possible because students find them more relevant and have more confidence that the opinions provide up-to-date expositions of the law. This is not to say that we disregard those older cases that remain superb teaching tools or that have become so well known that they have achieved iconic status. You will find a number of these cherished cases in the book. However, where we include an older case, we make a point of providing contextual discussion or a newer case as well so that students are able to appreciate the older case's relationship to the current state of the law.

Apart from their value as analytical tools, cases are also narratives. They tell stories about real people and actual events. A good story helps to brighten what might otherwise be a dry discourse. We therefore try to include cases, where possible, with provocative and interesting facts. If the facts are funny or outrageous, or if they involve a well-known public figure or a timely social issue, so much the better.

The Use of Questions and Problems

The cases are supplemented by questions and problems, many of which have been revised and updated in the Second Edition. We encourage students to think of the questions and problems as tools with which to reason through cases critically, and to question whether the court has achieved the correct and best resolution of an issue. The questions are designed to aid the students' preparation, by drawing their attention to difficult or crucial aspects of the doctrine and encouraging them to think about discussion points. Students should be able to answer every question from information provided in the book. Often, there is no one right answer to a question; thoughtful analysis can lead to different points of view.

We use problems to supplement associated cases or to introduce a topic that may be more effectively taught with a problem than a case. Some problems test students' understanding of, or their ability to apply, principles drawn from cases or other materials. Many of the problems, like many questions, are open to more than one analysis. As students think through a problem, they should assume that they may need to justify their conclusion to someone with an opposite view. They should develop an explanation that considers all of the issues, and addresses all legitimate concerns that an opponent might raise.

The Purpose of the Interconnecting Text

The cases, problems, and questions are bound together by interconnecting text throughout the book. It concisely introduces and explains concepts, places materials in context, and informs an exploration of the genuinely subtle and challenging aspects of contract law. Exposition is also used to incorporate commentary, criticism, and theoretical perspectives from legal scholarship. Also, because we believe that it is vital for students to see the relationship among the many topics that form contract law, we use the text, problems, and questions to help students discover the connections and analogies among different aspects of the course.

The Exploration of Issues Beyond Contract Law

While we devote most of our effort to drawing out the principles, policies, norms, and theory of contract law, we make it a point to go beyond this primary subject matter to explore the broader legal and societal fabric of which contract law forms an inseparable part. We pay particular attention to legal process, analysis, and argument. We raise litigation and procedural questions to help students to realize that procedural issues can significantly affect the resolution of contract disputes, and to encourage students to discover connections between their contracts and their civil procedure courses. As much as possible, we have integrated issues of legal ethics into discussion of cases. Where the cases are conducive to the introduction of other themes, such as agency, consumer protection, or the relationship between contract and tort, we take the opportunity to raise them.

Planning and Drafting Issues

Our primary focus on cases means that most contract issues appear through the lens of litigation. However, it is important to realize that most contracts do not end up in litigation. The First Edition had a number of questions and problems that raised these transactional issues. In the Second Edition we have increased the number of questions and problems that shift focus from doctrinal analysis or dispute resolution and provide exposure to these practical skills.

Law and Technology

As parties increasingly use communications technology in the formation of contracts, the application of legal principles to innovative means of entering contracts becomes more important. In the Second Edition we have added material that addresses the response of the law to electronic contracting. We discuss, for instance, the formation of contracts by e-mail and on the Web and the use of rolling contracts and shrink-wrap or clickwrap terms.

Remedies

Disputes over contracts almost always involve a “bottom line.” One of the parties seeks the payment of damages or some other remedy from the other. Contract remedies are therefore a major aspect of contract law. We follow the traditional organization of the contracts course by beginning with the formation of contracts and leaving full discussion of remedies to the end. However, the entire book is written with sensitivity to remedial issues, and we raise them throughout. Students will be quite familiar with basic remedial principles by the time that they reach the remedies portion of the book. Because we realize that some professors prefer to begin this course with the study of remedies, we have designed the materials to allow early assignments to be made from the remedies chapter.

Sales of Goods

Contracts to sell goods, governed by Article 2 of the Uniform Commercial Code (UCC), are commonplace and important transactions. We deal with sales of goods throughout the book and compare UCC provisions with analogous rules of general contract law. In some places, the materials integrate sales of goods and common law contracts. In others, we have separate sections that focus on the principles that apply to sales of goods. We have found that a thorough treatment of sales of goods alongside common law contracts works well. It makes students constantly aware that sales of goods may be subject to different rules and allows the students to contrast those rules with the common law as we progress through the course. It also helps them to appreciate the influence of the UCC on the development of the common law. Some professors may defer a significant portion of the coverage of sales of goods to an upper class course. We have attempted to make this book adaptable so that a professor who wishes to limit the students' exposure to sales of goods can do so.

We include in the materials the text of the applicable provisions of Article 2 of the UCC, together with relevant general provisions from Article 1. We have found that students appreciate having all the relevant statutory material in the book. They do not need a separate statutory supplement. (However, some professors still prefer to assign a statutory supplement that sets out the entire text and Official Comments of these Articles.)

Article 1 was revised in 2001 and Article 2 in 2003. At the time of writing this edition, revised Article 1 has been adopted in about half the states, but no state has yet adopted revised Article 2. This present discrepancy between the Official Text of Articles 1 and 2 and the law that has actually been enacted by state legislatures presents a dilemma: Should the contracts course cover the revised or pre-revision version of these Articles? In the First Edition, we chose to confine discussion to the pre-revision version. In the Second Edition we have changed this approach. We now focus on the revised version, which is, after all, the Official Text. However, in every UCC section that we cover, we indicate (usually in footnotes, but sometimes in the body of the text itself) what the pre-revision version provides. Where there has been no change, we note that. Where there have been changes, we explain them. By focusing on the revised text of Articles 1 and 2, we allow students to deal with the most contemporary version of these Articles and to recognize that the UCC is in the process of change. At the same time, we try to ensure that students are not confused by multiple versions of the UCC. A professor who wishes to emphasize the pre-revision version of the Articles can do so without difficulty but may wish to assign a statutory supplement that includes the pre-revision text.

International Perspectives

In the First Edition, we made only sparse references to the rules and principles applicable to international transactions, in an effort to avoid confusing students while they were trying to learn the basics of domestic law. We have been persuaded that it is important to give students a fuller introduction to the international and comparative perspective of contract law and that this will not risk confusion if presented appropriately. Therefore, in the Second Edition, we include regular notes on the UNIDROIT Principles of International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods (CISG). We include these notes at the end of most chapters. The notes are brief and merely expose students in broad terms to the similarities and differences between domestic law and the law that may be applicable to transactions across international borders. We also refer to comparative law perspectives where we feel that it is particularly illuminating to do so.

We have enjoyed writing this Second Edition. We hope that others enjoy it too and find it enlightening, supportive, and challenging.

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