

UNDERSTANDING CONTRACTS

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UNDERSTANDING CONTRACTS

Third Edition

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MATTHEW  BENDER

Preface

This book is about the law of broken promises. It is designed primarily for use by law students enrolled in the traditional first-year law school course in contract law. I also hope that practitioners, judges, and scholars who need an overview of the doctrine and theory of contract law will also find it useful.

The text relies on established common law principles as reflected primarily by case law and the Restatement (Second) of Contracts, as well as on relevant provisions of Article 2 of the Uniform Commercial Code (U.C.C.), governing domestic sales of goods, which is covered extensively. The second edition also covers the United Nations Convention on the International Sale of Goods (CISG), UNIDROIT Principles on International Commercial Contracts (PICC), and Principles of European Contract Law (PECL), at a level appropriate to a basic course in the law of contracts, and modern statutes regarding methods of electronic contracting.

The text is limited to the range of material I might discuss with one of my more ambitious students who is seeking help in understanding contract law during a detailed conversation in my office or online. To that end I have used several recurring fact patterns involving common situations that arise in the basic contracts course. Readers will quickly become familiar with the cast of characters and their deals: Sam's contract to sell his car to Barb; Industrial Supply's agreement to sell a quantity of new frimulators to Franklin Manufacturing; Julie's various agreements with Rhonda's Roofing and Winkler Builders to repair or renovate her home; and Karen's contract to sell her house to Phil, to mention a few. In addition, the book frequently refers to cases that are included in many of the most popular Contracts casebooks. They are the best examples of the core principles of the law of contracts, and nothing I could do here would serve as a substitute for reading these cases carefully.

Modern contract law practice includes a much wider variety of situations than those represented by these basic transactions. However, most of the development of contract law has involved one variation or another on three basic themes: contracts for the sale of land, contracts for the sale of goods, and contracts for construction or employment services. Where appropriate, I have added more elaborate details to these and other recurring situations to enable students to understand the wide variety of circumstances in which issues in contract law may arise.

In addition, I have tried to carefully explain concepts that students frequently struggle with. Thirty years of classroom teaching have left me with clear impressions of the topics that students have the most difficulty with. I have attempted to describe these subjects with clear explanations and pointed examples, reflecting the type of fact patterns students are likely to encounter both in the classroom and on final exams. These explanations frequently use the leading cases that are included in many Contracts casebooks.

The book includes a detailed table of contents that is intended to serve as a basic outline of the course. I hope that students will find it useful in organizing their own comprehensive outlines. However, it is no substitute for the hard and useful work of organizing the material on your own. Included as well is an extensive set of internal cross-references in the hope that students will find them useful in drawing connections between the various strands of the course. Finally, the book includes an extensive set of

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footnotes with citations that provide readers not only with support for the statements made in the text, but also refers them to supplemental resources that can be consulted for further study or for a more elaborate explanation of the topics covered by the text.

I enjoyed the assistance of many individuals in the production of this book. First and foremost were the efforts of my friend and co-author of the first edition, the late Penn State, Dickinson School of Law Professor Michael Navin. My sadness, as well as that of everyone who knew him, at his untimely passing, just weeks before the manuscript for the first edition was submitted to the publisher, is profound. I know that he would have liked to have participated in the corrections and improvements made in this edition and that he is frustrated over his inability to draw my attention to further improvements that could still be made. Not just the second edition of this book, but every other aspect of the lives of those who knew him, suffer from his conspicuous absence from our midst.

I received valuable assistance in preparing the third edition from Capital University Law School students Erin Porta and Eric Cass. I received similar help with the second edition from Capital University Law School student research assistants Bryn Beers, Kristin Chek, David Lynch, Deborah Auten Schrader, and Andrew Zamensky. Dickinson Law School student Matthew Stone and Capital University Law School students Katherine Johnson, Britton Atchley, Matthew Barkhurst, Damien M. Clifford, and Christina Lyons provided assistance with the first edition. Financial and other support from Capital University Law School and from both Capital University Law School Dean Jack Guttenberg and Associate Dean Shirley Mays was also key.

I owe a particular debt of gratitude to Professors Alan Shefflin and Gary Neustadter at Santa Clara University Law School, and to Professor Emeritus David R. Warner III at Ohio Northern University College of Law, who provided instruction and guidance when I was first a law student and later a neophyte Contracts instructor. I am also grateful for the capable editorial assistance of Ellen Boyne and Cristina Gegenschatz of LexisNexis, who pored over the manuscript and discovered and corrected many embarrassing mistakes.

Thanks is also owed to all of my contracts students over the past 30 years, primarily at Capital, Ohio State, Seattle University, and Ohio Northern, whose efforts to learn the law of contracts inspired this work. Their many questions have made it necessary for me to refine my understanding of the law of contracts and have prompted me to always seek to provide clearer explanations and useful examples of how the law applies.

Finally, work on this project could not have been maintained without the steady support and constant patience of my wife, Shawnee State University General Counsel, Cheryl Hacker. She suffered through many early mornings, late evenings, and grouchy moods, both at our home in Columbus and at our cottage on Martha's Vineyard, Massachusetts, while both editions of this book were being prepared.

The inevitable mistakes, of course, are entirely my own.

Jeff Ferriell
Columbus, Ohio & Oak Bluffs, Massachusetts
February 2014

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