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, we 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.

We 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, procedural, 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.

Since the first edition of this book was published, the amount of time law students devote to contracts in their first year has, regrettably, declined. Few schools continue to require two semesters of contracts. In an effort to make this casebook more manageable for those teaching a one-semester class, we have chosen to simplify its structure by condensing some of the more theoretical material on enforceability. This means that Chapter 8 ("Principles of Enforceability) and Chapter 10 ("Intention to be Legally Bound") from the seventh edition have been deleted

---

1. For example, the Russian invasion of Ukraine, cryptocurrency, surrogacy agreements, failed vasectomies, palimony claims, sexual harassment, reporters' promises of confidentiality, and children's rights.

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

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

4. References are provided to Randy E. Barnett, The Oxford Introduction to U.S. Law: Contracts (2010), E. Allan Farnsworth, Contracts (4th ed. 2004), John D. Calamari & Joseph M. Perillo, Contracts (6th ed. 2009), and John E. Murray, Murray on Contracts (5th ed. 2011).

entirely, and highly truncated portions of the materials from these chapters have been added to what have now become Chapter 8 ("The Doctrine of Consideration") and Chapter 9 ("The Doctrine of Promissory Estoppel"). All of the chapters after Chapter 7 have new chapter numbers in the eighth edition, although unless otherwise noted the materials remain the same. Our hope is that these edits will make the casebook easier to use in a one-semester class, while still covering the whole of contract's basic doctrinal structure. In addition, we have added some new cases, removed some material, and in a few cases further edited existing material for length. Here is a brief summary of what's been taken out and what's been added:

- In Chapter 3, we have deleted Bailey v. Alabama, edited Attorney General v. Blake, and added In re IBP Inc. Shareholders Litigation.
- In Chapter 4, we have deleted materials on the mailbox rule and added Bjorkman v. Arctic Cat, Inc., Ragland v. IEC US Holdings, Inc., and Rios v. State of Maryland.
- In Chapter 5, we have deleted Weinberg v. Edelstein and added Robinson v. Liberty Mutual Insurance Co.
- In Chapter 7, we have deleted Lawrence v. Fox and the accompanying article.
- We have deleted Chapter 8 entirely and added some of the materials on consent to be legally bound to what is now Chapter 9.
- In Chapter 8 (Chapter 9 in the seventh edition), we have added Passante v. McWilliam and Schnell v. Nell. Both cases were previously included in Chapter 10 of the seventh edition.
- We have deleted Chapter 10 from the seventh edition entirely, except for the cases now included in Chapter 8 and Chapter 9.
- In Chapter 9 (Chapter 11 in the seventh edition), we have deleted Pitts v. McGraw-Edison Co and added Wagner v. Lectrox Corp. (from Chapter 10 of the seventh edition), Smith v. Wheeler (from Chapter 10 of the seventh edition) and materials on consent from Chapter 8 of the seventh edition.
- In Chapter 14 (Chapter 16 in the seventh edition), we have deleted Hackely v. Headley and United States v. Progressive Enterprises and added Law Debenture Trust Corp. Plc. v. Ukraine and Martinez-Gonzalez v. Elkhorn Packing Co. LLC
- In Chapter 15 (Chapter 17 in the seventh edition), we have edited B2C2 v. Quoine for length and deleted the "UK Jurisdiction Taskforce, Legal statement on cryptoassets and smart contracts, November 2019"

For those professors who wish to teach contract theory by means of excerpts from what has become classic legal scholarship, the anthology *Perspectives on Contract Law*[5] continues 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 organization reflecting the cause of action for breach of contract: Enforcement, Mutual Assent, Enforceability, Performance and Breach, and Defenses. While starting with

5. Randy E. Barnett & Nathan B. Oman, *Perspectives on Contract Law* (5th ed. 2018).

enforcement or remedies, the approach pioneered by the great Lon Fuller, is sometimes controversial (and we explain this choice in the introduction to Chapter 2), the modular construction of the casebook permits professors easily to reorder these topics as they see fit.

Randy E. Barnett & Nathan B. Oman

October 2024