

Our Approach to the Fifth Edition

We are grateful to have had the privilege of developing and refining the book through successive editions. In revising for the fifth edition, we have maintained the tone, style, and approach of the book while incorporating new ideas for teaching the subject, updating the content to reflect new trends in the law, reorganizing the content of some chapters, and making changes to the book, based on our own experience and suggestions from others. We have kept most of the cases that were in the fourth edition, but have added or substituted new interesting and compelling cases. We have also retained many of the problems from the fourth edition, but have amended some of them and have added new problems. We have retained and made some revisions to the self-assessment multiple choice questions for each chapter, located at the end of the book.

Our philosophy and approach in writing this book has always been to present materials that are challenging and interesting but at the same time readable, clear, and accessible to students. Edited court opinions form the foundation of this book. We combine those opinions with full interconnecting explanatory text and with questions and problems designed to encourage students to think about and apply the legal principles raised by the cases or by other materials in the assignment. 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 fifth edition, to preserve what we consider to be the strongly beneficial features of the book and to adhere to its philosophy and approach.

The Role of Explanatory Text in This Book

This book is an interwoven combination of explanatory text, edited court opinions, notes, questions, and problems. Our explanatory text features very prominently in the book, and binds together the cases, problems, and questions throughout the book. It is designed to provide a coherent and guided treatment of the subject of contract law, legal reasoning, argument, legal philosophy, and practice. It concisely introduces and explains concepts, places materials in context, and informs an exploration of the genuinely subtle and challenging aspects of contract law. We try to make the text clear and concrete, so it often includes explanatory examples or hypotheticals. 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, together with problems and questions, to help students discover the connections and analogies among different aspects of the course.

This book is designed to give students a sufficiently complete set of readings for each class assignment to enable them to prepare effectively for a rich and challenging class discussion. Its goal is 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 understand the issues that will be tackled in class discussion. The explanatory text 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. Having taught from this book for many years, we are convinced that the approach of using clear and explicit interconnecting text has achieved our aim of allowing students to reach a subtler and more sophisticated appreciation of contract law and analysis.

The Use of Case Analysis as a Teaching Tool

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. In addition to using edited court opinions as principal cases, we also recount the facts and decisions of other cases, sometimes as case notes, and sometimes as the basis of problems.

We focus primarily on modern cases, and include a significant number of very recent ones. We believe in presenting modern cases 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 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 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

We include questions on most cases or groups of cases. The questions are designed to aid the students' preparation for class 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 or extrapolate from associated principal cases or to raise issues that may be covered more effectively by a problem. Some problems test students' understanding of, or their ability to apply, principles drawn from the preceding case. Others are connected to textual explanation and are used instead of a principal case to allow students to apply the principles expounded in the text to a new factual situation, or to test understanding of the text. Some problems are based on reported cases, while others present hypothetical facts.

Often problems call on students to consider how particular issues should be handled in practice, and periodically they present legal issues in a planning or transactional context. Some of the problems are relatively quick and simple while others require more complex analysis. Most problems are open to more than one analysis and require students to articulate and justify their resolution of the problem.

Self-Assessment Questions

We added self-assessment multiple choice questions to the fourth edition of the book and have retained them in this edition. The purpose of these questions is give students a means of self-testing their understanding of the materials after completing each chapter of the book. There are self-assessment questions and answers for each chapter located at the end of the book.

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 our discussion. 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. In this edition, we continue our approach of including questions and problems that raise transactional issues and that shift focus from doctrinal analysis or dispute resolution to provide exposure to the practical skills involved in advising clients, negotiating and drafting contracts.

Standard Contracts and Contracting Via Technology

Because standard contracts are so prevalent, we place particular emphasis on them throughout the book. As part of this focus, we pay close attention to the process of contracting through communications technology, including Internet-based contracts.

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 focusing on remedies toward the end of the book, in Chapters 20 and 21. However, the entire book is written with sensitivity to remedial issues, and we raise them throughout. Therefore, students will have acquired a basic knowledge of remedies even before reaching the more intensive exposure to remedies in Chapters 20 and 21. This should be particularly helpful in shorter courses, where there is not enough time to

cover remedies in detail. For courses where there is more time to allocate to remedies, but not enough to cover Chapters 20 and 21 fully, we have divided those chapters into smaller, self-contained units so that shorter assignments can be made.

Sales of Goods

Some contracts courses do not cover sales of goods under the Uniform Commercial Code (UCC) Article 2 in detail or at all, and defer a significant portion of the coverage of sales of goods to an upper-class course. We do cover sales of goods throughout this book but have attempted to make the book adaptable so that a professor who wishes to limit the students' exposure to sales of goods can do so. Our treatment includes discussion of applicable UCC Article 2 provisions in each chapter, and we regularly compare UCC provisions to analogous rules of general contract law. 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 appreciate the influence of the UCC on the development of the common law.

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.)

The Restatement, Second of Contracts

When discussing common law principles, we regularly refer to the Restatement, Second of Contracts. We sometimes quote the full text of relevant Restatement, Second sections in the book, but emphasize that the Restatement, Second itself is not a source of law unless and until an appropriate court adopts one of its principles into the common law. We regularly note how courts rely on the Restatement, Second as persuasive precedent, but also illuminate instances where court decisions depart from the Restatement, Second's approach. (Professors who wish their students to have ready access the full text of relevant Restatement, Second sections or their commentary may prefer to assign a supplement containing a more comprehensive selection of provisions.)

Global Perspectives

To introduce students to a global perspective on contract law, we include notes at the end of most chapters on the UNIDROIT Principles of International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods (CISG). 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 illuminating to do so.

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

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