

# Preface

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This book aims at helping law students to learn and understand the law of contracts. Most students will use it as a supplementary text in preparing for class, clarifying and supplementing readings assigned for class, reviewing class discussion, and preparing for exams. In deciding on the scope, depth, and approach of the book's coverage I have drawn on my many years of teaching contract law and my perception of which issues and questions students find most difficult. I have focused on what is likely to be most appropriate and helpful to a person who approaches contract law for the first time. This book's goal is to provide clear explanation of the doctrines of contract law, to identify the policies that underlie them, and to show how these doctrines tie in with each other to form the overall law of contracts. I believe that it is important to present legal discussion in concrete form, so I use factual illustrations throughout the book, some hypothetical and some in court opinions, to aid in the explanation of legal rules and principles and to show how they are applied in a factual context.

## **Changes in the Ninth Edition**

In revising this book for the ninth edition, I have retained the scope, approach, and coverage of the eighth edition, including the expanded treatment of standard contracts and contracts formed through electronic media, and notes on the transnational perspective of contract law. I have not changed the overall organization of the book, but have made small changes in the internal reorganization of some chapters to improve clarity. In my revisions for the ninth edition, I have continued my efforts to provide an accessible treatment of the law of contracts, altering text and diagrams to the extent necessary to update and clarify the discussion, adding new cases, and refining the Examples and Explanations by adding new ones and changing or eliminating some of the older ones.

The ninth edition continues to have a glossary at the end of the book, followed by tables of cases and statutes and a comprehensive index.

## **The Treatment of the Sale of Goods in the Ninth Edition**

The ninth edition continues to cover contracts for the sale of goods, governed by Article 2 of the Uniform Commercial Code (UCC Article 2). The extent to which UCC Article 2 is part of the syllabus in contracts courses

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varies. Some contracts courses omit coverage of UCC Article 2, leaving sales of goods to an elective upper-class course. Others include it to a greater or lesser extent. This book covers sales of goods to the extent that a student may need it in a contracts course that includes the study of UCC Article 2. It discusses applicable provisions of UCC Article 2 with regard to each topic in which sales of goods are subject to rules that differ from those applicable to other contracts. Discussions of UCC Article 2 are clearly demarcated in the text to allow students to identify them.

## **The Style, Approach, and Purpose of This Book**

Materials assigned for reading in preparation for class and the discussion of those materials in class can leave students with uncertainty and questions. Supplementary reading is very helpful to understanding and digesting what is covered in class. To be most useful, such a supplementary text should be written with an awareness of the coverage, depth, and scope of most contracts courses, and with a sense of what students are likely to need by way of additional reading. In writing this book, I have tried to keep that goal in mind. Relying on my own experience as a teacher of contract law, and on the content of casebooks, I have tried to maintain the discussion in this book at the level of sophistication that may be expected in a typical contracts class.

To achieve this purpose, it is not enough to outline legal rules or to state doctrine. Although it is surely one of the aims of a contracts class to teach the current rules of law governing contracts, a knowledge of current legal rules is only one of the components of an adequate understanding of contract law. Students are also expected to comprehend the derivation and development of the rules, their historical and contemporary rationale, the public policies that they are meant to serve, and the way in which they coalesce to form a coherent body of law. Rules and their underlying policies are not static. They develop and change over time, they are often unsettled or formulated differently in different states, and some are the subject of controversy. Therefore, students must also be exposed to the uncertainties of the law and must learn to develop the ability to evaluate critically, to form judgments, and to articulate arguments for or against a legal proposition. In addition, like so many other courses in law school, a contracts course serves the goal of exposing students to broader issues of legal process, legal analysis, dispute resolution, and lawyering skills such as drafting, advising, and evaluating the strength of a case. This book attempts to encompass this range of learning. Its principal aim is the clear and accessible explanation of the fundamentals of the law, with a particular concentration on what information is likely to be helpful to a student who approaches the subject for the first time.

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As part of the effort to clarify legal principles and the relationships between contracting parties, I have used diagrams where I believe that visual representations are helpful in clarifying and reinforcing verbal exposition.

## **The Use of Examples and Explanations**

Concrete examples place doctrine and abstract principles in context and show how they operate to affect behavior and resolve disputes. I therefore use factual illustrations extensively, some hypothetical and some drawn from decided cases, in the text itself to illustrate concepts under discussion. In addition, a distinctive feature of this book is the Examples and Explanations at the end of each chapter. Their purpose is not only to provide further illustration and discussion of the subject matter of the text but also to give students a means of self-testing on the topics covered. The Examples pose questions based on hypothetical facts, and the Explanations analyze and offer a resolution to the problems. As a general rule, the Examples and Explanations do more than simply provide a means of reviewing what has been stated in the text. To resolve them adequately, a student must use reasoned argument and must thoughtfully apply the principles set out in the text. You will therefore benefit the most from them if you do not merely read through them but rather take the time to formulate your own answer to an Example before reading its Explanation. This will allow you to test your knowledge and understanding of the material, to practice identifying issues, and to develop skills in composing and organizing answers to the kind of questions commonly found in exams.

## **The Organization of This Book in Relation to Your Contracts Course**

There are a number of different ways to organize a contracts course, and the casebooks reflect quite a diverse approach to the sequence in which material may be covered in class. It is therefore quite possible that a particular contracts course will not follow the same sequence as the chapters in this book. (For example, some courses begin with remedies for breach of contract, which is not covered here until Chapter 18.) I have written this book with an eye on the divergent ways in which the topics of contract law are presented in different classes, so a student should have no trouble reading chapters out of order. To use this book in the same sequence as your contracts course, simply refer to the table of contents to find the part of the book that deals with the subject under discussion in class. You can also use the index, table of cases, and table of statutes to find those sections of the book and those Examples and Explanations that correspond to what you are studying in class.

One of the goals of this book is to help students to see the interconnection between the various doctrines that are covered in the contracts course.

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To this end, I have included numerous cross-references in each chapter to direct you to topics covered elsewhere in the book, which have a relationship to the topic discussed in that chapter.

## **A Recommendation to Read Chapters 1 Through 3 at the Start of Your Contracts Course**

Irrespective of the organization of your class, I recommend that you read Chapters 1, 2, and 3 as soon as possible. These short chapters are intended as an introduction to some of the root principles of contract law and legal analysis. They contain basic information and guidance on core concepts, terminology, and case analysis that may not be expressly articulated in your class materials or discussion. By taking the time to work through these chapters at the beginning of the semester, you can avoid the confusion and uncertainty that could arise from unfamiliarity with these basic principles.

## **The Glossary**

A glossary at the end of the book contains succinct definitions of terms that you are likely to encounter in the contracts course. Some of these terms relate specifically to contract law, and others are legal terms that are used more widely. Most of these terms are explained in the body of the book, but the glossary is a means of finding a quick explanation of their meaning.

## **The Use and Citation of Authority in This Book**

To make this book as readable and accessible as possible, I have kept citation of authority to a minimum. You will not find detailed footnotes and citations that you would expect in a treatise or law review article. However, some sources of authority are an integral part of the process of learning contract law and are referred to constantly throughout the book. They are:

1. The Restatement (Second) of Contracts (referred to in the book in abbreviated form as Restatement, Second), a compendious and highly influential formulation of the rules of contract law. The Restatement, Second is introduced and described in Chapter 1.
2. Articles 1 and 2 of the Uniform Commercial Code (UCC). Article 2, governing contracts for the sale of goods, is the principal focus of the book's discussion of the UCC. Article 1 is supplementary to Article 2. It has general provisions applicable to all Articles of the UCC, including Article 2. The scope and operation of these Articles of the UCC are introduced and explained in Chapter 2 and specific provisions are covered throughout the book.

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3. **Caselaw.** Court opinions are a vital source of law in our system. I discuss many cases in the text and in some of the Explanations. I do not use cases merely as authority for legal rules but as factual illustrations and as a means of highlighting legal principles, argument, and reasoning. I selected many of the cases in this book because of their interesting or even entertaining facts. I have tried to use recent cases wherever possible to reflect the law in its contemporary state. However, there are many important or well-known older cases that are commonly taught in contracts courses, and I have included many of those, too. You should therefore find that at least some of the cases discussed here are also included in your class materials.

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